(16,320.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 189.

HENRY M. BAKER, APPELLANT,

vs.

HORACE S. CUMMINGS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 339.

Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Original Bill.

(Filed February 1, 1890.)

In the Supreme Court of the District of Columbia, the 1st Day of February, 1890.

HORACE S. CUMMINGS, Complainant,
vs.
HENRY M. BAKER, Defendant. } No. 12263, Docket 30.

To the supreme court of the District of Columbia, holding an equity court:

The complainant states as follows:

1. He is a citizen of the United States, residing in the city of Washington, District of Columbia, and brings this suit in his own right.

2. The defendant, Henry M. Baker, is a citizen of the United States, and also resides in Washington aforesaid.

3. That the complainant and the defendant have, for more than fifteen years last past, been attorneys-at-law, and engaged in the general practice of their profession in the various courts of the District of Columbia, and of the United States, as well as before the executive and legislative branches of the Government.

4. That on or about the first day of January, 1876, the complainant and defendant entered into an agreement, by parol, to form a copartnership to prosecute the practice of the law, at Washington aforesaid, under the firm name and style of Cummings and Baker; said agreement was to the effect that they were thereafter, and until either party should desire to end the partnership relation, jointly to prosecute their profession as attorneys-at-law as equal partners,

each to share equally in all the profits or losses of their joint business, and said partnership continued from thence until about the first day of September, 1889, when it was dissolved by mutual consent.

5. That under said partnership relation, the complainant and the defendant continued to transact all their legal and professional business upon joint account as such partners, except as hereinafter specially set forth. And the complainant faithfully fulfilled all the obligations of his partnership agreement, until the dissolution thereof as aforesaid.

6. That among the items of business transacted under the agreement aforesaid were a class of cases, which consisted of claims against the United States, by inspectors of customs, growing out of a prior improper construction of sections 2733 and 2738 of the Revised Statutes of the United States, by the accounting officers of the Treasury Department. That the course of procedure in the prosecution of the said cases, which for convenience are hereafter called "inspectors' cases," was as follows: A contract was obtained from the claimant, by which the firm of Cummings and Baker agreed to prosecute the claimant's claim upon a contingent fee (in most cases) of twenty-five (25) per centum upon the amount which might be recovered. The claims were then formulated, made up and presented to the accounting officers of the Treasury Department, and if allowed, appropriations to pay the same were asked for by the Secretary of the Treasury from the Congress, and when said appropriation was made the claims were then paid by the Treasurer of the United States in the usual way. This partnership business grew to be of considerable magnitude, and as said inspectors' cases were all of similar character, it was deemed convenient in the prosecution of the business of the partnership, which embraced other important causes, that this particular class of cases should be placed in the management and control of one of the partners, and (the same being true of other cases in the division of work in the law office of these parties), the management and control of these "inspectors' cases" passed completely to the care of the defendant, Baker, so that for several years prior to the 1st day of September, 1886, the complainant had only a general knowledge of the business being done in said cases, and nearly all the papers and memoranda in relation thereto, were in the manual possession of the defendant, Baker. And prior to that time a great many of said cases had been prosecuted to final payment, the money received thereon being collected for the most part by the said Baker, and a division of the net avails being had between the parties, in accordance with their agreement, as least so far as the said defendant Baker made return thereof. That on or before the said first day of September, a great many of said cases had been presented to the accounting officers of the Treasury, and by those officials duly allowed, and appropriations by Congress had been made therefor, and said Baker was then engaged in the collection of the amounts due thereon. And the complainant states that the defendant Baker had full knowledge of all the details of said business, and particularly well knew and under-

stood what of said inspectors' cases had passed to such congressional appropriation, and also well knew that the complainant did not know what the amount of such allowance for said cases was. In addition to the said cases, in which the fees of the copartnership had been fully earned as aforesaid, there were other of said cases in the office, as to which no appropriation had been made by Congress, but which were still pending and awaiting allowance or appropriation; and also there were many other of said cases, the prosecution of which the firm had taken measures to secure by contract with the claimants, and which were in fact secured by the defendant, as hereinafter set forth. Of all of these matters the said defendant alone had full and complete knowledge and information; the said defendant, on or about the 6th day of September, 1886, approached the complainant and requested complainant to sell out or assign to him, for the sum of fifteen thousand dollars, complainant's interest in the fees earned in those cases where an appropriation had been made, and also in those cases where contracts had been obtained from the claimants, and in which no appropriation had been made, and also those claims, contracts for the prosecution of which it was expected would be secured by the said firm, and thereupon various conversations were had, on divers occasions, about that time, in regard to the proposed purchase of complainant's said interests by the defendant, at one of which conversations the defendant handed to the complainant a bundle of papers, which he said contained information upon which the complainant could ascertain the value of the said interest. But upon examination of the said papers the complainant was unable to gather therefrom any adequate information without the aid and explanation of the defendant, and thereupon the complainant, knowing that the defendant well knew all the facts and reposing that confidence in him which the association of many years of professional and business relation had created (besides being entitled, as the partner of him, the said defendant, to be put in possession of all the knowledge which the defendant had acquired in the prosecution of their joint business), requested the defendant to inform the complainant, first, as to the amount due the firm on account of fees which were earned in said inspectors' cases and for which appropriations had been made by Congress; and, second, the amount of claims not then appropriated for by Congress. And the defendant then and there stated to the complainant that the amount of fees earned and payment of which was already provided for by act of Congress was but the sum of twenty thousand dollars ($20,000.00), and the amount of all other claims of said inspectors' cases not then appropriated for would be about eighty thousand dollars ($80,000.00) in which said last-mentioned cases the expected fee to accrue to the firm would be about twenty thousand dollars ($20,000.00).

And this complainant avers that relying on the deliberate statement of his said partner, the defendant, in relation to this branch of their joint business which had been within the defendant's exclusive control, as aforesaid, for so long a time he, the complainant, returned the said papers to the defendant, and stated to him that

he would be willing to accept defendant's offer and to assign and receive as and for his interest in the fees in all of said cases as follows: that is to say, of the twenty thousand dollars in fees already within the congressional appropriation, one-half thereof, to wit, the sum of ten thousand dollars ($10,000.00) and for the remaining cases (unappropriated for) the further sum of five thousand dollars ($5,000.00) or in all the sum of fifteen thousand dollars ($15,000.00), which offer complainant was induced to accept solely by means of the said representations of the said defendant. The defendant thereupon drew up in writing a paper purporting to be an assignment by the complainant to the said defendant of the complainant's interest in said cases for the said sum of fifteen thousand dollars, and the complainant thereupon signed and executed the said paper and delivered the same to the defendant, but the complainant not having kept a copy thereof cannot set forth the same in words and figures, and although he has repeatedly asked the defendant for a copy of the same the defendant hath hitherto wholly neglected and refused to comply with the reasonable request of the complainant in regard thereto. The defendant thereupon gave the complainant a check for $15,000.00, which was duly paid.

7. And the complainant further shows that at the time of his inquiry of the said defendant as aforesaid, and when the assignment was made as aforesaid, instead of there being, as represented by defendant, but twenty thousand dollars ($20,000.00) of fees in the cases in which there had been appropriations made by Congress as aforesaid, as complainant afterward discovered, more than thirty-two thousand dollars ($32,000.00) of such fees — earned, and of which the greater portion had already been collected by the defendant, and in which the share of this complainant, as an equal partner with the defendant was one-half, or more than sixteen thousand dollars ($16,000.00), and the complainant therefore avers that the representation of the said defendant in regard thereto was false, untrue and misleading, and tended to the manifest injury, wrong and prejudice of the complainant in the premises. And the complainant further shows that instead of there being only eighty thousand dollars of claims in cases where no congressional appropriation had been made, there were more than two hundred and seventy-five thousand dollars of such claims, and although complainant does not aver that the said defendant knew the exact and full extent of the claims unappropriated for at the time he made the representations in regard thereto, yet he believes, and therefore avers the fact to be, that the defendant well knew that he was largely understating the amount thereof when he stated the same to be eighty thousand dollars, and well knew that the complainant relied upon the truth of said statement as a basis of the agreement which resulted in said assignment.

8. And the complainant avers that he was by the wrongful act of the defendant in the premises and by means of the said untrue, false and misleading representations as to the amount of said fees, induced to execute said paper-writing purporting to be an assignment of the complainant's interest in said inspectors' cases, and he

therefore says that the defendant holds the said assignment against equity and good conscience, and that the same ought to be regarded as null and void and of no effect whatever, and the complainant of right is entitled to an equal division, not only of said thirty-two thousand dollars ($32,000.00), but also of such fees as the said defendant has received out of the claims subsequently collected, and that the complainant is entitled to an accounting as if said assignment had not been executed.

9. And the complainant further shows, that although his suspicions were aroused soon after executing the said assignment, as to whether the said defendant had dealt with him fairly in the matter of said inspector cases, it was not until about the first of August, 1889, that the complainant ascertained that the defendant had misrepresented the amount of fees earned and to be earned in said cases, when he executed the said assignment, and thereupon he immediately informed the defendant of his discovery and demanded that the defendant should account to him in respect thereto, but that the defendant has hitherto wholly refused so to do, and complainant states that upon a full and complete accounting between the complainant and defendant under the direction of this court in respect of said partnership matters, the defendant would be found largely indebted to complainant.

10. And the complainant further shows that on the 19th day of December, 1889, the said defendant commenced an action of assumpsit upon the common counts against the complainant on the law side of this court, demanding the sum of $2,712.81 and interest from the 31st day of July, 1889, and appended to his declaration a bill of particulars of his claim, which said declaration and bill of particulars the complainant makes a part hereof, and prays leave to read on the hearing of this cause as often as occasion may require. And complainant avers that all of the items in the said bill of particulars originate in and grow out of the partnership dealings of the parties, and not otherwise, and that the said items do not constitute a full adjustment of the rights of this complainant and the said defendant, and that only by a full, proper, and complete accounting and discovery under the order and direction of a court of equity could a proper adjustment be had of the rights and equities of the complainant and defendant growing out of their partnership dealings. That the said suit at law is not yet at issue, but that the time for pleading thereto has nearly approached, and that the complainant cannot under the rules of pleading at law incorporate in his plea the equitable defences herein set forth, and which in a court of equity would prevail against the defendant's demand, and especially is the equitable right of the complainant to have discovery in the premises and to have the said assignment cancelled and held for nought a matter not cognizable by a court of law, and if the defendant were, therefore, permitted to prosecute his said suit at law against complainant this complainant would be deprived of his defences to said suit now pending as aforesaid, and that the complainant is therefore entitled to have the defendant enjoined from prosecuting his said suit at law and to have this court order and direct a

full and complete accounting between complainant and defendant in respect of their partnership dealings as aforesaid.

Wherefore complainant prays as follows:

1. That subpœna may issue according to the usages of this court, requiring the defendant to answer without oath the exigency of this bill of complaint, the complainant hereby expressly waiving an answer under oath, and particularly that the defendant shall therein full, true, and perfect answer make to the following interrogatories:

First. State the exact amount of said claims for inspectors of customs, giving the names of the claimants and the amounts due to each, which had been prosecuted by the firm of Cummings and Baker up to the time of making the assignment mentioned in the bill of complaint and in which the fees had been received by said firm or either member thereof, and for which appropriation had been made by Congress prior to the making of said assignment. Also state the amount of fees received in each of said cases.

Second. State the exact amount of claims which the defendant has since said assignment prosecuted to appropriation or payment and give details showing the amount thereof, the dates of payment, and the amount received in each case and when received.

2. That the said assignment be declared null and void and be held for nought, and that the defendant be directed to surrender the same for cancellation.

3. That the defendant may be enjoined from the further prosecution of said suit at law begun in the supreme court of the District of Columbia on the 19th day of December, 1889, and numbered on the docket of said court as law No. 30197, pending this cause, and that upon final hearing the injunction may be made perpetual.

4. That a full and complete account may be had under the order and direction of this court between the complainant and defendant in respect of the said partnership dealings, and the defendant be decreed to pay to complainant the amount which may be found to be due him, and for a full and complete discovery as to all matters herein set forth.

5. That the complainant may have such other and further relief as to the court may seem just.

HORACE S. CUMMINGS.

The defendant to this bill of complaint is Henry M. Baker.

FRANKLIN H. MACKEY,
A. G. SAFFORD,
Solicitors for Complainant.

I, Horace S. Cummings, do solemnly swear that I have read the foregoing bill of complaint by me subscribed, and that I know the contents thereof, and that the facts therein stated upon my personal knowledge are true; and those stated upon information and belief I believe to be true. HORACE S. CUMMINGS.

Subscribed and sworn to, before me, this 31st day of January, A. D. 1890.

[SEAL.] ROBT V. HUGHES,
Notary Public.

Answer of Defendant Baker.

Filed Feb. 10, 1890.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS *vs.* HENRY M. BAKER. } Equity. No. 12263, Doc. 30.

The answer of the defendant, Henry M. Baker, to the bill of complaint of Horace S. Cummings in chancery exhibited.

This defendant saving and reserving all exceptions to the manifold errors in said bill contained, and answering so much thereof as he is advised it is material and necessary for him to answer, answering *and* says:

1. Answering paragraph one of said bill, this defendant says that he will not avail himself of the permission accorded by the bill to answer without oath, but will answer said bill as if *though* required to do so under oath.

This defendant admits the averments of paragraph one of said bill.

2. Answering paragraph two of said bill this defendant says that he is a citizen of the United States, sojourning in the city of Washington, District of Columbia, for business purposes, but that his domicile is in the State of New Hampshire.

3. Answering the third paragraph of said bill, this defendant says that the averments thereof are true as to the defendant, but this defendant states, upon information and belief, that the complainant is not a member of the bar of the supreme court of the District of Columbia, or of the Supreme Court of the United States, or of any other legal tribunal in said District, except the United States Court of Claims, and that from September 1, 1884, to August 31, 1889, he, the complainant, never made a motion or argued a case in that court, while in session.

4. This defendant, answering the fourth paragraph of said bill, says: This defendant denies most positively the allegations in said paragraph as set forth, but avers the truth to be that the complainant and defendant did enter into a parol agreement for a limited partnership on or about the 1st day of July, 1874.

That prior to that date the complainant mentioned to this defendant that he, complainant, had heard that the defendant intended to open a law office in said city of Washington, and as the result of the conversation then had and on other occasions soon thereafter, both complainant and defendant agreed to open a law office together; that the complainant then had his office at the northwest corner of F and 12 h streets N. W., in the said city of Washington, over a liquor saloon; that the defendant refused to occupy that office, and as a result the offices were opened at 1411 F street N. W., in said city, which office the defendant now occu-

pies, were rented, and complainant and defendant occupied them about the 15th of September, 1874, putting up firm signs, having firm letter-heads, firm cards, firm blanks, &c., all under the firm name and style of "Cummings & Baker;" that their agreement was in parol; that the defendant suggested a written agreement to be duly executed, but complainant said it was wholly unnecessary, and in consequence thereof none were executed; that by their said parol agreement each was to devote his whole time, attention, abilities, &c., to the practice of the law in Government cases only, and that all of the fees so earned were to be divided equally between them with the single exception, to wit: that the complainant was to have the entire fees arising from the cases the complainant then had on file or there adjudicated, but not settled. The defendant attaches to this answer an original lithographed letter issued at its date and mailed, to the number of about two hundred and fifty, to persons believed to have legal claims against the United States. The said letter shows the letter-head first used and issued by the said firm in September, 1874. The said letter is marked Exhibit A and made a part of this answer and prays to be read at the hearing; that said copartnership, with the modifications and exceptions hereinafter stated, continued until on or about the first day of September, 1889. This defendant denies that there was any change in their partnership agreements on or about the first day of January, 1876, as complainant avers, or that there was any change whatever then or at or about that time.

5. Answering the fifth paragraph of said bill, this defendant says that under the said partnership as stated herein the complainant and the defendant continued to transact their professional business on joint account, with the exception of the complainant's unfinished business, as hereinafter stated, until on or about the — day of September, 1886, when the defendant became sole owner of one branch of the business theretofore conducted in the joint account, as will be more fully stated in answer to the subsequent paragraphs of this bill of complaint. This defendant unequivocally denies that part of said paragraph five wherein the complainant so complaisantly avers that he "faithfully fulfilled all the obligations of his partnership agreement," and asserts that in the years 1880, 1881, 1882, 1883, 1884, 1885 and 1886 the complainant became more and more neglectful of the interests of the partnership business, and seemed manifestly to lose his interest therein. So far as rendering any personal service was concerned, this defendant was compelled to speak to complainant of his lack of service on several occasions, and went so far, in consequence thereof, as to suggest to complainant a dissolution of their partnership relations; complainant objected, and assured the defendant that he, complainant, would in the future attend more closely to the business; that the improvement promised was not realized, except spasmodically; the defendant pointed out to complainant on more than one occasion business which complainant ought to secure, and which complainant promised he would attempt to obtain, but made no well-sustained effort to obtain; that had complainant done so he could have easily secured cases for and in

the Court of Commissioners of Alabama Claims, organized under the act of Congress approved June 5, 1882 (22 Statutes, 98), which would have yielded fully $25,000 in fees; that complainant did not even attempt to secure such business; that all the cases in that court which we had were filed, the testimony taken, and were argued by this defendant, although he was then busy with other firm business, at which he worked more hours in one week than the complainant worked upon the firm business in a month; that the defendant earnestly urged complainant to be admitted to the bar of that court, and offered to move his admission thereto, because he wished complainant to take the testimony in some of the cases pending in that court, but the complainant refused to be so admitted, and thus deliberately kept himself in a position where he could not render that service or any other in that court; that this was the only one instance of complainant's neglect, when others might be stated; that during the (above) fifteen years the partnership relations existed, in some form or another, the complainant did not even make a motion in any open court, or attempt to argue a case therein; that the defendant having all the business he could attend to, the complainant in several instances, without consulting the defendant, engaged other attorneys or agents to attend to his business, and thus not only decreased the influence of the firm, but deprived the defendant of fees to which he was justly entitled. And the defendant, further answering, says that owing to the complainant's neglect and failure to discharge his duties under and by reason of said partnership agreement, he did not, so far as defendant is advised, during the last five years and more of said partnership relation secure fees for his services to a greater amount than about $5,800, which said amount the said complainant has not divided with the defendant, and refusing so to do the defendant hereto has heretofore brought suit against him upon the law side of this court, which suit the complainant by his bill in equity seeks to restrain this defendant from prosecuting. This defendant further says that complainant in explanation of his neglect of business, once informed defendant that he had been endeavoring to work up some "outside business," but that it had failed. He did not inform defendant of its nature, and defendant does not know what it was. Defendant further says that in the fall of 1884, H. D. Cooke & Co., bankers, failed and made an assignment to the complainant; that it was then stated that Cooke & Co. were largely indebted to complainant, and complainant stated to defendant that he, complainant, accepted the office of assignee to protect himself; thereupon defendant stated to complainant that the assigneeship was outside of their partnership agreement, and virtually ended it; and then the defendant suggested that it be formally dissolved. Complainant replied that he did not think it would take much of his time, and that he would divide his fees as such assignee the same as though the fees were secured in the practice of the law. This defendant was not satisfied, but upon the earnest entreaty of complainant the defendant consented to make a trial of the matter. From that time until the end of the partnership relations, about five years, complainant did very little law or claim

business. Complainant's neglect became so unbearable that in the early part of 1886 defendant informed complainant that he wished to close the partnership relations existing between them, and proposed to complainant that they settle to date all receipts and expenses; that each take as his own all unfinished business taken since the first day of January, 1885, and divide all fees in business taken before that date, as they should be collected, each to retain and manage the business each then had in hand. To this proposition the complainant did not consent, but proposed to divide the business on the first of January, 1886, instead of 1885, if we must close; or he said in consideration of the greater services rendered by defendant, if he, the defendant, would continue with complainant he would consent to take one-third instead of one-half of the fees collected in the class of cases called in paragraph six of the bill "inspectors' cases." At this stage of the matter the defendant offered to buy all the complainant's right, title and interest in and to the fees in said "inspectors' cases," and offered to pay complainant $14,000 in cash therefor.

Finally, after the negotiations, and preliminaries specifically stated in the answer to paragraph six of the bill, the defendant paid complainant $15,000 and relinquished to complainant all his right to share in the fees derived from the Cook & Co. assignment for the right to the sole ownership of the fees in the said "inspectors' cases," and upon these terms the defendant consented that the partnership relations, as thus modified, might for the present continue. The partnership as thus modified continued until about the 1st of September, 1889.

C. Answering the sixth paragraph of said bill, the defendant says that each and every of the allegations averred in this paragraph are without the semblance of truth, and are unqualifiedly false, unless in some way these averments are modified by the following facts: "The course of proceedure" in the so-called "inspectors' cases" is very inaccurately and insufficiently stated by the complainant and that the complainant well knows such to be the fact,

and the defendant believes that such statement was purposely and intentionally made to the prejudice of the rights and interest of the defendant;

that the so-called "inspectors' cases" involved no less than six distinct propositions of law, dividing those cases into as many distinct classes, and that there were disputed questions of law and fact in many of the individual cases in each class. That to win those cases the defendant filed briefs, or made oral arguments or both, before the Secretary of the Treasury, the solicitor of the Treasury, the first auditor, the commissioner of customs, the Attorney General, the House and Senate Appropriation Committees and the Court of Claims (20 C. C. R., 115); that in some (form) these cases were before those officers and tribunals, and before some of them the defendant appeared frequently, and before the auditor and commissioner of customs for months together almost daily. This defendant further

avers that his knowledge of these cases was derived solely from his study and work; that complainant could have had an equal knowledge of them in the same way, and that frequently defendant asked complainant to render services in connection with them; and that more frequently than otherwise the complainant neglected to do so. This defendant says that at all times the complainant, prior to his sale to the defendant of all his right, title and interest in said "inspectors' cases," had full and free access to and use of all the agreements, books, papers, records and all other memoranda, which pertained to, or in any manner had any connection with those cases; and that if the complainant did not avail himself of the opportunities that surrounded him in regard to them, he is alone to blame, and any attempt to censure any one else comes with a very bad grace from the complainant, having within his knowledge the truth of the facts herein set forth by the defendant.

The defendant further says that when he offered the complainant $14,000 for all of complainant's right, title and interest in and to the so-called "inspector's cases" as stated in answer to the fifth paragraph of said bill, complainant considered that offer favorably, and the defendant then gathered together the books of fee agreements, a prepared list showing in what cases the fees were less than twenty-five per cent. of the amount secured; a list of all the cases allowed and not paid; a list of the pending cases; a list of the suspended pending cases; a partial list of the cases in which the fees were to be divided with other attorneys, and a list of the cases known to the defendant, which were not secured by any attorney, and which might or might not be secured by the defendant or others; and the Treasury Department Registers of 1874, 1875, 1877, 1879, and 1883 were delivered to complainant by the defendant with the remark that the defendant would tell him anything in regard to them or answer any question in regard to them which he, the complainant, might ask. At the same time the defendant had in his possession and had had for from two to six months House Executive Documents of the first session of the 49th Congress, numbered 70 and 225, showing the whole amount of the allowances in favor of the inspectors, and at the time the said complainant took the books and papers herein stated he, the complainant, well knew that appropriation had been made by Congress to pay all of said "inspectors' cases" enumerated in said executive documents.

All of the said books, papers, and documents are herewith submitted for the inspection of this honorable court.

The defendant further says that these books, papers, and documents were all the books, papers, and documents, except the statutes of the United States, which the defendant used to ascertain the nature and amount of the "inspectors' cases," and that they were full and ample for that purpose and were full and ample to enable the complainant to obtain an accurate and sufficient knowledge of the extent and value of the said "inspectors' cases." The defendant further says that complainant took the said books and papers away from the office and retained them in his possession for more than two weeks, and the defendant believes complainant had them

at his residence. Complainant then returned them to the office. The defendant further says that he then and at all times prior to the consummation of the sale herein stated made full and complete and correct answers to all the questions asked of him by the complainant of and concerning said books and papers, as well as all facts concerning the "inspectors' cases," to the best of his then knowledge and information. At this time complainant had offered to take one-third instead of one-half of the fees in the "inspectors' cases," and upon that basis the bargain and sale of his rights to fees in said cases was made.

The defendant further says that complainant was not ignorant of the amount of fees resulting from those cases, as he had occasionally divided those fees with him ever since 1877; and that in the year 1885 defendant paid to the complainant $18,000 as his share of such fees collected in that year.

The defendant further says he never offered to pay complainant more than $14,000 for complainant's interest in the said cases, but that a few mornings after the return of the books and papers aforesaid by the complainant the complainant said to the defendant, "I have been thinking the matter over, and if you think it best for me and you will pay me $15,000, I will sell out to you." The defendant then and there refused to advise him, but offered to answer any questions of fact complainant wished or desired to ask, and then said, "I think it is more than I ought to pay; but to end the matter I will give it, if you wish." The complainant said he would take it, and the sale was then and there consummated by the defendant giving complainant his, defendant's, check for $15,000, payable to the order of said complainant, and verbally relinquishing to complainant all right of the defendant to share in the fees or to be derived from the assigneeship of H. D. Cooke & Co., held by the complainant, and the complainant then signed the following paper:

WASHINGTON, D. C., *Sept. 6th*, 1886.

Received of Henry M. Baker fifteen thousand ($15,000) dollars in full for all interest in and right to fees in the so-called inspector cases. This includes all cases in which fees have not been divided and settled, except one draft to the order of John C. Long, and one to the order of James Mitchell, both dated in 1875, whether paid or unpaid, filed, or outstanding.

(Signed) H. S. CUMMINGS.

the original of which will be offered in evidence at the proper time.

This defendant, further answering, says he does not know positively, but he verily believes that his share of the assigneeship fees would have been, if honestly accounted for, not less than $5,000, so that the entire compensation paid the complainant by the defendant was really not less than $20,000. This defendant further answering says:

That he has no doubt that the complainant fully and well knew the amount of the allowances for which appropriation had been

made and knew it when he offered to take the $15,000 as above stated. If he did not know it, it was because the complainant did not make a simple arithmetical computation which any grammar-school scholar of medium attainments could easily make.

This defendant, further answering, says most emphatically and especially denies that complainant ever asked defendant as alleged the amount of fees earned in those cases for which appropriation had been made, and without reservation pronounces complainant's allegation that defendant stated to complainant that such fees were but the sum of $20,000 to be wholly and entirely false. This defendant further says that he informed the complainant which of the cases reported in the House executive documents as aforesaid were not theirs, and that the list of fees in each case, when other than twenty-five per cent., gave the complainant all the information needed to determine the gross fees to be received; that the defendant also informed complainant in what cases and to what extent those fees were to be divided with other attorneys; and defendant has no reason to doubt that complainant at that time made the necessary computation to determine the fees to be thus received, which complainant must have known were more than he now alleges defendant said they were. This defendant further denies, most positively, that he ever stated to the complainant that the remaining cases would amount to about eighty thousand dollars. This defendant had made no computation relative thereto, and could not have so stated. This defendant further positively denies that the complainant has ever from the date and delivery of the receipt signed by the complainant, and by complainant called an assignment, asked defendant for an examination, or a copy of it, and defendant says that had complainant done so, he, defendant, should have gladly shown it to complainant, or furnished complainant with a copy of it. This defendant further says that without request, some two months ago defendant voluntarily showed the said receipt to the complainant's senior solicitor.

7. In answer to the seventh paragraph of said bill, the defendant says that there is not an allegation in this paragraph which is true, and they are absolutely false.

That when the complainant stated that he, complainant, was entitled to more than sixteen thousand dollars of the fees in the cases appropriated for at the time of the said bargain and sale, that he, complainant, said that which complainant had every opportunity and reason to know was false, and when complainant stated "that the representation of the said defendant in regard thereto was false and misleading, and tended to the manifest injury and great wrong and prejudice of the complainant in the premises," he, the said complainant, deliberately stated that which complainant knew well was false and in every particular untrue; and defendant says said averment is wholly and absolutely false. This defendant further says that he, defendant, absolutely avers that he, defendant, never made the statements, nor the substance of such statements as averred relative to the amount or the value of the remaining cases, and em-

phatically denies that the complainant relied upon or could have relied thereon.

8. Answering the eighth paragraph of said bill, this defendant absolutely and unequivocally denies each and every allegation averred therein.

9. Answering the ninth paragraph of said bill, this defendant denies fully, positively and absolutely that he, defendant, did not deal fairly with the complainant in the matter of said "inspector cases." As hereinbefore stated, the defendant furnished the complainant with all needed data, and all the data and information which existed, in the office or out of the office within his control in regard to the cases, that was within the knowledge and possession of the defendant, more than two weeks before the bargain, purchase and sale to the complainant, by which sale the defendant became the sole owner of the attorneyship and the fees in those cases. The defendant, further answering, says that he, the defendant, had no doubt at the time of said sale, and has no reason to have any doubt now, but that the complainant, at that time, knew and fully understood the whole matter and the effect of his act as fully and completely as this defendant then knew the same, or as any one could know it prior to the final adjudication of the pending cases. This defendant, further answering, says that within three days from the said bargain and sale aforesaid he, the defendant, left the city of Washington for a few weeks, and complainant accommodated the defendant by attending to the payment of a few of defendant's clients, for whom the money awarded them was ready, but who had not forwarded to defendant their powers of attorney, to enable defendant to endorse the drafts issued to their orders, deduct the fees due, and to remit the clients the balance. To enable the complainant to do this, the defendant left with the complainant some twelve or fifteen checks on defendant's bank, drawn to the order of the complainant, with the date and amounts thereof left blank, and were signed by this defendant as maker thereof; that complainant then, in the absence of this defendant, cancelled the check for $15,000 issued and delivered to complainant by the defendant for the bargain and sale of the cases aforesaid; and from the blank checks hereinbefore described, left with complainant to fill up and pay the clients aforesaid, he, the complainant, took three of the said blank checks and filled them up in his own handwriting, each for the sum of $5,000, and respectively dated September 7, 15, and 29, 1883, which said checks will be produced at the proper time. The defendant further says that he, the defendant, left with the complainant six sheets of schedules upon which were entered the names of all the clients entitled to payment from the appropriation then payable, and which were included in the aforesaid House Executive Documents Nos. 70 and 225, and which are the cases referred to by complainant as the cases for which appropriation was made when the aforesaid bargain and sale took place; that the said schedules contained an accurate statement of the amount allowed each of said clients, the amount of fee due from each, and the amount to which each client was entitled after the

deductions of the fee the client had agreed to pay, and that defendant also left with complainant sheet No. 7, which showed the remittances made by the defendant to associate attorneys. This defendant, further answering, says that the complainant while thus acting for defendant made collections and remittances, as is shown by complainant's own handwriting on said schedule, on the 9th and 29th of September, 1886, and on days intervening between those dates; that the defendant was absent from this city all of the time between those dates, and that the complainant had during all of that time the sole possession and custody of said schedules, which showed the entire fees resulting from the said cases then appropriated for and payable as aforesaid. This defendant, further answering, says that upon defendant's return to this city, complainant returned to this defendant said schedules, defendant's bank book, unused checks, &c., and did not in any manner express to defendant any dissatisfaction with complainant's said sale to the defendant, which sale the complainant had on three separate times ratified by the three separate checks issued by complainant to his own order as aforesaid at dates twenty days apart, during all of which time the complainant had in his possession the said schedules showing the fees as aforesaid, as above stated. This defendant, further answering, says that as time ran on defendant had earned other fees in other cases, in which complainant was entitled to share; that some of those fees were collected by complainant, and some by the defendant, and that the office expenses had been paid in part by each, but to a greater extent by this defendant; that there were other matters between complainant and defendant which should be settled, and that defendant from time to time earnestly tried to secure such settlement, and complainant as earnestly tried to postpone it; that the only reason complainant ever gave to defendant for his, complainant's, unwillingness to have such settlement was that complainant thought that he, complainant, owed defendant money; that complainant gave that as a reason to defendant in the year 1887; that thus matters continued until about the first day of August, 1889, when the defendant informed complainant that there must be a settlement, and that defendant intended upon such settlement to dissolve their partnership relations. It was there for the first time that complainant expressed to this defendant any apparent dissatisfaction with the sale of September, 1886, and then first having shown to defendant a paper dated September 7, 1886, entitled "Thoughts in mind for the last few days," which complainant said he wrote at the time it bears date. This defendant says that when defendant had read it he, the defendant, denounced complainant for having such a paper in his possession for about three years, and during that entire time occupying the same office with the defendant, the party upon whom the said paper is intended to reflect, and never deeming the matter of such sufficient importance as to mention it or show it to the defendant. The defendant, further answering, says that this defendant asked permission of the complainant to take a copy of said paper, which permission was granted and a true copy was made, which this defendant retains, and has now in

his possession, and prays may be read as a part of this answer, if the complainant shall fail to produce the original paper, as has been called for. The defendant, further answering, says that the defendant wrote the complainant in reply to said paper, and that complainant's attorney has been duly notified to produce at the hearing said two papers, the original and the reply thereto of the defendant, and if not produced defendant prays to be allowed to read the copies thereof at the hearing of this cause.

10. Answering the tenth paragraph of said bill, this defendant most positively denies that all of the items in his particulars of demand attached to defendant's action of assumpsit brought against the complainant originated or in any manner grew out of or were a part of the partnership dealings of the parties hereto, and emphatically and unequivocally avers that several of the said items therein stated were entirely of and for an individual and personal character, and that the items thereof of the partnership origin are based upon an account stated, and so far as this defendant knows the complainant does not deny said bill of particulars. Further answering said paragraph of said bill, this defendant positively avers that the items in said particulars of demand attached to the said action at law do constitute a full adjustment of all the rights of this defendant and of the complainant, and which were all duly and properly ascertained by an accounting between the complainant and the defendant, and the result of said accounting was the stated account attached to said action at law, and which said stated account was intended at the time to be a full, complete, and final adjustment of the business theretofore existing between the parties; that complainant well knew and fully understood every item that entered into and made up said particulars of demand; that the original account, of which the particulars of demand aforesaid is a copy, is now in the possession of this defendant, and said stated account shows some of the items in said stated account are in the handwriting of the complainant, in which complainant wrote down, at the time of accounting, in the first adjustment and stated account. That account stated was intended by all the parties to be a final statement with a balance struck, as ascertained, and nothing was left for future adjustment or to account for, and certainly no doubt can, for one moment, be entertained to the contrary. And this defendant says there are no equitable rights of the complainant outstanding that need discovery, as all the rights of the respective parties were duly considered at the time the parties hereto reached a final statement of the account sued on at law; that there remains no secret or hidden facts that were not known to the complainant when he, the complainant, took part in making up the account stated, and nothing to discover that was not discovered and open to the complainant at that time; that the complainant has a full and complete defense at law, if he has any defense at all, which this defendant avers that complainant has not; but defendant avers that this bill is filed with a view to delay the suit at law, in the hope that some compromise may be effected.

This defendant is advised that complainant wholly failed to

set forth in his said bill any fact wherein and whereby fraud or mistake or accident or error on the part of the defendant can be predicated of, and hence he prays the benefit of this answer as a demurrer as if he had specially demurred thereto.

This defendant, further answering said bill, says that he cannot make an accurate statement showing the amount of fees collected or defendant's just and proper expenses in the prosecution of said cases, because, after the bargain and sale and the payment of the money for said purchase to the complainant of September 6, 1886, defendant never kept an account of such receipts, only as is shown by remittances to clients and others which is wholly negative, and no account whatever of defendant's personal or other expenses in said inspector cases have been kept. Such expenses, however, amounted to thousands of dollars, but this defendant could not render an account of them, because he has never had any account or memorandum of them, and the complainant well knows the truth of this statement. Being the owner of said cases this defendant was not to account to any one for them. This defendant very reluctantly says the filing of this bill is an attempt on the part of the complainant to unjustly and wickedly obtain the money, by legal process, which belongs to the defendant, by reason of the fair and solemn agreement signed by the complainant, under the full light of every material fact then existing, and free and clear from any misrepresentation on the part of the defendant. This defendant feels very confident in his own mind, and therefore avers that if the complainant, for one moment, entertained the belief that this defendant could show such expenses in connection with the cases aforesaid, the complainant would not have brought this case. This defendant further answering says it is an undeniable fact, that all the complainant had to do, at any time during the twenty days that complainant had the pay schedules in his possession, to ascertain the gross fees was to add up six short columns of figures; the entries on page 7 showed the remittances to the other attorneys in the cases. And defendant very respectfully submits that, in the light of the averments charged in the bill, *that* complainant did do so.

This defendant, further answering, says that this is an attempt on behalf of the complainant, after the lapse of more than three years, with the full knowledge of all the facts, to attack said sale as void; the claim here made by complainant is old and stale, and such as is not favored in equity; and especially ought such demands as this be frowned down by equity after the lapse of this period of time, and during the whole period and over of three years the complainant has not said nor made any effort against the *bona fides* of said transaction; and the complainant here pleads the statute of limitations in his behalf; that said claim did not accrue, nor was any demand made to show error or otherwise by complainant to defendant within the period of three years.

This defendant says that the complainant has made no assault upon the account stated; that he has no defense to make thereto, but his object is to set aside another and independent transaction, that was especially made over three years ago, and did not enter

into or cut any figure at the date of the dissolution of the partnership, and at the time of the stated account, which said stated account was a final termination of said partnership, and the complainant opened an office in another building, and going into business on his own account.

This defendant says the injunction prayed for should not be granted, and the bill dismissed, &c.

HENRY M. BAKER.

Sworn and subscribed to before me this 10th day of February, 1890.

WILLIAM K. ELLIS,
Notary Public.

Replication.

Filed Nov. 1, 1891.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } Equity. No. 12263.

The plaintiff joins issue with the defendant on his answer, and will hear the case on the pleadings and testimony to be taken.

FRANKLIN H. MACKEY,
Sol'r for Pl'ff.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } Equity. No. 12263.

MONDAY, *February 29th*, 1892, at 2 o'clock p. m.

Met, pursuant to agreement of counsel, to take testimony on the part of the complainant in the above-entitled cause.

Present: Mr. Franklin H. Mackey, solicitor for complainant, and Mr. J. J. Johnston, solicitor for defendant.

Whereupon HORACE S. CUMMINGS, the complainant and a witness in his own behalf, having been duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. MACKEY:

Q. Where do you reside?
A. I reside in the city of Washington, District of Columbia.
Q. You are the plaintiff in this case, Mr. Cummings?
A. I am.
Q. You allege in your bill that you were at one time a partner

with the defendant, Henry M. Baker. Will you state how that partnership came about, and bring us up to the time when you made the alleged assignment set forth in the bill.

A. I was a graduate of Dartmouth college of the year 1862. Mr. Baker was a college-mate of mine for three years; he graduated in 1863. I studied law or read law under Charles H. Bell, of Exeter, Mass., afterwards governor and United States Senator. I attended the Albany law school; was admitted to the supreme court in New York December, 1863; continued my law studies in New York city; returned to New Hampshire; was admitted to the supreme court of that State in April, 1864. I came to Washington and held a clerkship in the second comptroller's office of the Treasury from February, 1865, to July, 1873, when I resigned and went into law business. I confined myself entirely and exclusively to the practice of Government claims before the executive departments, as I don't think that a person could well attend to both branches of law. I was very successful. My office was on the corner of 12th and F Sts., occupying a suit of rooms in conjunction with another gentleman who was in the same class of business. This office had been previously occupied by a Mr. ——, and it was upon his recommendation that I took them. The first year of my practice I gathered a large number of cases that I filed, and either completed or had partially completed the preparation of the same, and they were either awaiting additional evidence or adjudication. In the summer of 1874 Mr. Baker, the defendant in this suit, knowing of my success, had an idea that he could better himself by leaving the Treasury, where he had been a clerk since 1864, and proposed a partnership to me. I, having the utmost confidence in Mr. Baker and in his ability, agreed to the same, with this exception, that all cases that I had on hand or which I had filed or which I had partially prepared and done the large part of the work for their prosecution I retained for myself, but all new business that came in after the date of our partnership, in the fall of 1874, we were to share equally in the fees and to divide the expenses. There never was any partnership or articles drawn up in writing. I would also say this, that we never kept any book of accounts of any sort; he would keep his own cases and I would keep my own cases. Soon after our partnership was formed we discovered that the Government were not paying inspectors of customs and persons doing the duties of an inspector of customs the salary or compensation which was designated in the Revised Statutes. We consulted upon the matter and Mr. Baker, having been for years connected with the customs branch of the Treasury and therefore being much more familiar with that branch than I was, took charge of those cases. After a lapse of time we sent out circular letters, signed by Cummings and Baker, to all the persons that we knew were entitled to this additional compensation beyond what they had received, with a power of attorney to the contract. At first we sent out these powers of attorney and contracts in the name of Cummings & Baker, but for convenience sake we agreed that in my particular line that the powers of attorney should be made to me, and in these customs cases that

they should be made to Mr. Baker for the more convenient handling of the cases. The method that we pursued in gathering the cases was as follows: We had all the Registers of the Treasury Department, which showed the name, the address, and the amount of compensation received by every inspector of customs in the United States, and also showing the time when he was appointed and the length of time that he was in service. It was a matter of simple calculation, knowing the time, knowing the amount that he had received, and knowing the amount that we contended he should receive, to estimate what the amount due to each man was. We would write a form of letter and then have it signed "Cummings & Baker," and then have it photolithographed, and those we would send out by the hundreds, writing many times to a single inspector before we could secure his power of attorney and the contract. Our stipulated fee and the fee in all these cases, except in a very few cases, was twenty-five per cent.—of course, contingent upon success. Up to 1886 we had about one thousand powers of attorney and contracts, and we had presented and collected more than eight hundred individual claims.

Q. In the inspector cases?

A. In the inspector cases. On earlier powers of attorney we would present the claims from the time in which the increase pay was due up to the day that we presented the claim. In the course of a few years, if the man still remained in office, with the power of attorney we filed we would present another claim and obtain a second allowance for the man. In the course of a few years more, if the man still remained in office and his pay unchanged, we would present a third claim; so that we could make all these powers of attorney and contracts to collect as high as three claims to a person. In the prosecution of these cases we were successful until about 1883, when the Congress refused to make an appropriation, but instead of making and appropriation outright they made a contingent appropriation to pay that lot of claims that had been adjudicated by the department, with the proviso that at least two cases should be sent to the Court of Claims, and that the Court of Claims should pass thereon; that if the Court of Claims found favorable to the claimants, then the claims were to be paid, and the balance of the claims were to be paid. If unfavorable, then none of them were to be paid. Those cases went to the Court of Claims and were argued, and the Court of Claims gave a decision unanimously in our favor. After that, no question could be raised or was raised by the department in regard to any of these cases. As I have said, it was like a row of bricks; you start one to going and the rest follow.

Q. Now, come down to 1886.

A. In 1886 Mr. Baker, who had exclusive and entire charge of all of these cases, who kept all of the records pertaining to them in his own desk under lock and key, and about which I knew nothing beyond the simple or general principle on which they were based, wanted to buy me out of these claims. From the first part of '86 up to September of the same year he frequently broached the subject, but nothing was done one way or the other. In August, 1886,

he became very strenuous and said that he wanted this thing settled, and Mr. Baker knew that I at that time was in need of considerable money, as I was carrying on some pretty extensive building operations for myself; he offered me then $15,000 for my interest; then I told him that, though I didn't believe in parting with my interest, yet, for the sake of peace and harmony, I would sell him out my interest in these claims for what was right and fair; I asked him his opinion as to what I ought to have for my interest and he one day, I know, gave me the powers of attorney; he gave me several books of powers of attorney, about one thousand in number, and a lot of documents; I think it embraced about sixteen or seventeen executive documents and a lot of schedules, and he said, "Look them over and see for yourself, and if there is any case that you don't understand I will explain it to you;" in fact, I would have had to ask him about every individual case, because the contract, we will say, of John Smith—I could not see whether that meant a hundred dollars or a thousand dollars; I could not tell whether he had had one allowance or two allowances; there was nothing to show how much there was still coming to John Smith, and knowing that Mr. Baker was my partner, and knowing that he was perfectly familiar with the whole subject, and knowing that as a partner he was entitled to no knowledge*ledge* about those cases to which I was not equally entitled, and believing that what he would say would be the entire truth in the matter, I said, "Mr. Baker, I make you this proposition: I will take one-half fees in all the cases in which we have power of attorneys and contracts prior to the 1st of January, 1886, or I will take one-third of all the fees in all the cases (leaving him two-thirds), or I will take $15,000, as you offer, according to what you think is the best for me."

Q. You say Baker offered you $15,000; you didn't mention that first; you may state when he first offered you the $15,000.

A. He made the offer of $15,000 a few days before that; I could not say exactly when.

Q. Was that the time he gave you the papers or before?

A. I think it was before.

Q. What was his statement as to about what your share was worth based upon—any statement of his as to how much the business amounted to? Did you ask him, in other words, about how much these cases amounted to at that time?

A. I will say that I asked Mr. Baker how many fees there were that were due us in cases that had been adjudicated and for which appropriation had been made, and which were then in the process of collection, and he said, About $20,000 or not more than $22,000. I was somewhat surprised at that and I so expressed my surprise to him; he said that our fees in some of those cases were not as much as usual; some only about 10, 15, or 20 per cent.; but I will say here, that I had never seen the list of cases with the amount of fees that had then been adjudicated in 1886, for which an appropriation had been made by Congress and rulings had been made in the Treasury, until after I had made an assignment to him. I simply took his word for it.

Q. Did he make any other statement in regard to the other class of cases?

A. My proposition to him to take half fees in all the cases prior to 1886 or one-third then in all the cases or $15,000. He had said that there was 20,000 and not more than 22,000 of fees then due and in process of collection, and that there was not more than 75 or 80,000 dollars of cases in the future.

Q. You say "$75,000 or $80,000 of cases." What does that mean—the amount of fees?

A. No; it means the cases of which the fees would be 25 per cent. of the 75,000 or 80,000.

Q. Did the $22,000 consist of fees?

A. They were actual fees earned and due us then.

Q. And represented about $84,000?

A. According to our usual schedule of fees, $84,000 of collections. After I had made this offer to Mr. Baker, relying upon his statement of the amount of fees then due and of the cases still to be prosecuted, in a day or too he came and presented me with an assignment and a check for $15,000.

Q. You are going a little too fast. You were upon the point where he had given you certain papers after stating to you that these fees in the cases in which appropriation had been made amounted to $20,000 or $22,000, and that the other claims in which no appropriation had been made amounted to $75,000 or $80,000. You say that he gave you some papers to examine. What did you do with those papers?

A. When he gave me the papers to examine I found that it was totally impossible to find or to make an estimate of the amount due or the value of those cases without examining every one of the thousand claims, and in that case I knew nothing about any of them, and I would have been obliged to consult Mr. Baker about every individual claim; so after looking over the papers and seeing the utter uselessness of my attempting to make any such computation I gave them back to him and told him I should have to rely upon his judgment, and, relying upon his judgment, I made the offer on his representation that I have before recited. He then, as I have repeated, presented me with a contract and a check for $15,000. I said, "Baker, then you think this is for my advantage?" What reply, if any reply, he made I don't recollect. That night or next morning he left town, because at that time he was engaged in politics in New Hampshire. He handed me the schedule and requested me to go on collecting the fees. He also said, "Cummings, don't put in that check for $15,000, for there is not money enough to pay it." I was a little surprised at that, because I had supposed that the cases had nearly all been collected, and that the money was there to pay me the $15,000. He had left me his check book signed in blank and in a day or too wanted some *some* money. I cancelled the $15,000 check, and I filled up a $5,000 check and put it in and collected it. I went on collecting the cases, crediting the amount of fees to Mr. Baker's account, until I collected $5,000 more

of fees. I then paid myself out of my collections a second $5,000 on the 15th of September, 1886.

Q. By putting the money in bank?

A. By putting the money to Mr. Baker's credit in the bank and filling up a blank check of his for $5,000. I collected it and took the money. I then went on collecting still more, and on the 29th day of September, 1886, I paid myself $5,000 more, so that nearly all of the $15,000 that I took in payment I collected myself.

Q. From the department?

A. From the department. There were deposited in Carson & McCartney's bank, on account of the collections on this specific lot of claims on which I made an assignment to Mr. Baker, at — $128,000.

Q. Who deposited them?

A. Mr. Baker and myself, both.

Q. How much did you deposit?

A. I could not say. I deposited over $30,000.

Q. Now, then, your check was paid in that way. When did you first obtain any knowledge as to the amount of claims which had been collected by Baker upon the first class of cases—I allude to the class of cases in which he said there were from $20,000 to $22,000 in fees, the cases in which appropriation had already been made; and you may also state at the same time when you first discovered in regard to the other class of cases in which no appropriation had been made—when you first discovered the amount?

A. The amount of the claims that had been adjudicated and which were in the process of collection I discovered, of course, within a day or two after Mr. Baker had delivered me the schedules, and I continued the collections, because these schedules contained the name, the amount, the fee, and all the data pertaining to each case, and it was hard for me to reconcile the amount of fees that he said and the amount of fees that were on the schedule, and I know often we had to pay out a large amount of our fees to other attorneys, as I frequently had paid one-half of a fee to a local attorney to work up the evidence, and I had supposed the great diminution of these fees from what I supposed, viz., $32,000, in the vicinity of $30,000 was owing to the division with other lawyers. It has been my habit in a number of cases—I write down my ideas of things, and on that occasion I sat down and I made a private memorandum for myself, giving my impressions of the matter, wondering as to whether I had done the best or not and wondering if the facts were——

Mr. JOHNSTON: This is objected to as immaterial and inadmissible and irrelevant.

A. (Continuing:) I made a private memorandum as to my impressions of the case and that I preserved for some time.

Q. Now, passing from that, you were stating that you collected these fees and paid your check out of the fees that you collected, after first depositing them to Mr. Baker's credit in the bank. What I want to get at is this: When did you first discover and how did

you discover that Mr. Baker had overreached you in getting this assignment from you?

A. Mr. Baker, when I made the assignment, said that there was $75,000 or $80,000 of cases. Under Congress of 1886 and '7 Mr. Baker had had allowed about $75,000, or in that vicinity, of inspector cases and which went to Congress for appropriation; that Congress made no appropriation for the deficiency bill and it failed. I thought then Mr. Baker was pretty near correct in his estimate, $75,000 to $80,000; that was what he told me there was of additional cases and that is the amount that was set up for appropriation, I supposing that that was all the cases there were, and he had no further cases adjudicated that I know of in the year of 1887. In the winter of 1887 or '88 Congress made an appropriation to cover the $75,000 or $80,000 of cases that had been sent up the previous Congress and which remained unappropriated for. When they were allowed I helped Mr. Baker, aided him as much as usual—in fact, I gave as much aid, or perhaps more, in collecting this lot of cases in January or February, 1888, as I ever had in collecting any of the others. To my astonishment, late in the spring of 1888 Mr. Baker had another lot of cases sent up, amounting to about $70,000 or $75,000 worth of cases. Then I began to think. Could it be that Mr. Baker could have been so mistaken as to get out only one-half of the cases? Along in August, to my astonishment, there was another lot of about $60,000 or $70,000 worth of cases allowed, making something over $200,000 worth of cases, while I had supposed there was $80,000.

Q. More than Mr. Baker told you?

A. Yes, sir. In the collection of these cases Mr. Baker was quite worried on account of a recent order that had been issued on the Secretary of the Treasury in regard to the issue of drafts.

Q. You found out that there were $200,000 up to that time?

A. Yes, sir; and there were several lots after that. It was when I saw, in 1888, this large amount of cases allowed, where I had supposed there was only $80,000, according to Mr. Baker's statement, that it set me to thinking. I then began to investigate the question of the fees of 1886—the first lot of cases.

Q. That is, that lot of cases in which he stated that the fees were from $20,000 to $22,000?

A. Yes; and I was convinced that the fees that were due and had been earned and paid in September and October, 1886, instead on being $20,000 and $22,000, were really from $32,000 to $34,000, one-half of which were mine at the time when I made the assignment.

Q. Then, in regard to the other class of cases, you say you discovered that they, instead of being $75,000, amounted to about $200,000?

A. Amounted to $275,000 of cases, my opinion is.

Q. From your knowledge of the business, you say there probably was a hundred thousand dollars more?

A. No, I don't know; there was a great many thousand; I cannot say how many thousand.

Q. There is a great many thousand dollars more that haven't been collected yet?

A. Yes, sir.

Q. Having made this discovery, did you say anything to Mr. Baker about it?

A. Not at that time.

Q. State why and when you did speak to him.

A. I said nothing to him because I had implicit confidence in Mr. Baker and I believed that he would do what was right. The matter drifted along until the summer of 1889. No settlement was made between us in regard to any matters, and one day the conversation came up, and I said, "Mr. Baker, I want to talk about those inspector cases." He said, "Well, what do you want to say?" I said, "Baker, how many fees were there that were due, one-half of which were mine, in September, 1886, the time I made that assignment to you?" He said, "Twenty or twenty-two thousand." I said, "Will you let me see the schedule?" He said, "No; I will not." I said, "Have you the schedule?" He said, "I have." I said, "Why will you not let me see them?" He said, "Because it is none of your business." I then pulled my memorandum out that I had made in 1886, giving my impression of the affair, and read it to him. He was very excited over it. We had some conversation. The next morning Mr. Baker asked me, "Are you willing that I should read that memorandum?" I said, "Certainly; I have nothing to conceal." So I let him have it. In a day or two he handed me, or rather I saw lying on my desk what I supposed was the memorandum; I have never seen it from that day to this. I then moved my office after that, and what became of the memorandum and of a great many other papers I don't know. Under the circumstances, I lost at that time the checks covering over a hundred thousand dollars in my accounts with Carson & McCartney. I have never been able to discover them, and I presume they were lost or mislaid in the hurry of moving; anyway, it has caused me a good deal of trouble, but I have never seen that memorandum from that day to this.

Q. You have stated that you spoke to him about the cases in which appropriation had already been made in September, 1886, when you made the assignment; did you speak to him at any time in regard to the great difference between the amount of other claims which he stated would be collected ($80,000) and the amount which was actually collected, $275,000?

A. I spoke to him about this grent discrepancy many times, but he never would answer me. On the 23rd of August, 1889, I wrote him a letter in which I said practically: "This whole difference between us can be settled in a moment if you will only show me the list of cases and of fees that were received in 1886. You say that there was only $20,000 to $22,000 of fees; I say that there were from $32,000 to $34,000 of fees. What did you do with the other $12,000 of $14,000? Did you pay it out to any person? I don't care to whom or for what you did pay it. Did you pay it out, and will you give me your word that you did pay them out?" I re-

ceived a letter from him dated August 24: "It is none of your business; I bought you out of those claims, 'horse, foot, dragoon and all.'"

Q. Mr. Baker always refused—that is, in relation to the $20,000 or $22,000 of fees that you collected on this appropriation. My question, however, was directed to the $275,000 of claims which he afterwards collected?

A. He never would discuss the point with me at all; I went so far as to tell him—I said, "Mr. Baker, I am willing to leave this to any person that you may select."

Q. Leave what?

A. The whole question of my claim, to any person that he might select.

Q. Your claim for what?

A. To know the difference of the fees that were received in 1886, and he always refused. I have since made him the offer to leave it to arbitration of any one he chose, and his answer was, practically, "I won't discuss this question of the assignment and of the claims collected after the assignment."

Q. Now, it is alleged in the answer of Mr. Baker—Mr. Baker states in his answer that having full knowledge of all the facts necessary to "attack said sale as void, have allowed three years or more to elapse without making complaint." You may state why you made no complaint sooner than that.

A. It was impossible to tell whether I had been deceived or not in regard to the number of claims until the claims had been allowed and paid. There was no payment of claims for one year and four months after the date of the assignment, and it was not until the summer or spring of 1888 that I was aware or could be aware that any more than $75,000 or $80,000 of claims were still to be prosecuted, and it was not until the fall of 1888 that I knew that the amount of claims was so much in *the* excess of what Mr. Baker told me.

Q. In other words, you didn't find out the extent to which you had been overreached until late in the fall of 1888?

A. I couldn't find out, because the claims were never adjudicated or appropriated for before that time.

Q. Then you filed this bill on the 1st of February, 1890. Between the fall of 1888, when you found out that you had been overreached, until February, 1890, what were you doing in respect of this matter that you didn't file it sooner? Were you discussing the matter with Baker?

A. After the fall of 1888 I said nothing to Mr. Baker in regard to this apparent discrepancy until the summer of 1889, when we discussed the matter and wrote many letters about it to each other, up to the time when the suit was commenced.

Q. What led to your leaving that office and taking and office of your own?

A. Under the circumstances, when a man finds that he can't put any confidence or trust in a person whom I believed had deceived me so greatly, it was impossible to remain with that man, and I

chose to move from the office because Mr. Baker lived in the building. The room back of the office he kept as a sleeping-room. He had all of his personal property—his desks, his furniture, his clothing—and it was much easier for me to move than for Mr. Baker, and so I left the office.

Q. And went into business for yourself, did you?

A. I went into business for myself, and which I have since continued.

Q. After you had your suspicions aroused by the large amount of claims that were being collected by Mr. Baker, did you make any effort at that time to find out by inquiry at the department how much Mr. Baker had collected of claims? You may state when, if you did make any such effort.

A. I can't tell when, but after I had had my talk with Mr. Baker and he refused to give me any information in regard to the amount of fees, one-half of which was mine and due from September, 1886, I went to the department and obtained an order from Mr. Windom upon the commissioner of customs to furnish me with a list of the drafts payable under the appropriation of 1886 in the customs and inspector cases that were delivered to Cumming & Baker. That list the commissioner of customs made out and sent to me under his signature. I also had an order from Mr. Windom for a list of all of the drafts that were delivered on account of inspector cases since the 1st of January, 1888. That list was also made out and furnished——

Q. How long was it before you brought suit that you got that list?

A. It was afterwards. I had made the calculation from the executive documents and from cases that I knew we had the power of attorneys in, approximately, before, but nothing final or conclusive. At the same time when I got the list from the department of the drafts that were delivered to Mr. Baker or Cummings & Baker on account of the inspector cases I obtained the powers of attorney I set a man to work on the powers of attorneys, and he went through them, and it took him about a month to do it.

Q. That was after you brought your suit. I was speaking of the time before you brought your suit. You have already stated that you were discussing this matter with Mr. Baker for some time before you brought suit.

A. Yes; for six months.

Q. Discussing what?

A. Endeavoring to get a statement from him of the amount of fees that wer- due us and earned in 1886, one-half of which was mine.

Q. Now, you stated that when you called upon Mr. Baker just prior to making this assignment he stated to you the amount of claims that had already been appropriated for by Congress and the amount of claims that he expected to collect. Did you have any reason to suspect at that time the integrity of Mr. Baker at all, before you made the assignment, when you and he were discussing the

question of selling out to him—did you at that time have any doubt of Mr. Baker's integrity and fair dealing with you?

A. None whatever. I will say that I had every confidence in Mr. Baker up to that time that I ever had in any man living. As I have often said, that if I was going to leave the country and be gone for four years I would not hesitate to take all my property and securities and put it down on Mr. Baker's desk and say, "Mr. Baker, I am going to be gone for some time," and when I come back again I have no doubt that I would have an entire and true accounting for the whole thing.

Q. That was your confidence in him?

A. Yes, sir.

Q. How long had you known Baker up to that time?

A. I have known Baker since 1860.

Q. I believe you said you had made his acquaintance at college. Did you know him before that?

A. No, indeed.

An adjournment was here taken until further notice.

SATURDAY, *April 16th*, 1892, at 3 o'clock p. m.

Met pursuant to agreement.

Present: Franklin H. Mackey, Esq., and H. O. Claughton, Esq., counsel for the complainant, and J. J. Johnston, Esq., counsel for the defendant.

Thereupon—

Mr. MACKEY: We offer in evidence this transcript from the Treasury Department, containing copies of certain drafts and warrants, with the indorsements thereon, and ask the examiner to mark the same.

(Which is filed, marked "Exhibit H. S. C. No. 1.")

Mr. JOHNSTON: The counsel for the defendant objects to the introduction of the paper now offered in evidence because it is incompetent, irrelevant, inadmissible, and immaterial upon the issues made in the pleadings in this cause, and his objection as made would be the same if the originals were produced or properly certified copies were produced wherein the Government would be a party and not to the improper certificate or improper filling up of anything connected with this exhibit. The objection goes, as above stated, solely as if the originals were presented.

An adjournment was here taken until further notice.

SATURDAY, *May* 28, 1892, at 3 o'clock p. m.

Met pursuant to agreement.

Present: Franklin H. Mackey, Esq., and H. O. Claughton, Esq., counsel for complainant, and J. J. Johnston, Esq., counsel for the defendant.

Thereupon—

Mr. MACKEY: The complainant offers in evidence a writing purporting to be copies of letters of Henry M. Baker directed to the

first auditor of the Treasury, and it is agreed by the defendant that the said copies shall be read in evidence with all the force and effect as if the originals were produced, subject to any objection as to relevancy, incompetency, or admissibility of the said testimony; but the defendant does not admit in evidence the memoranda written at the bottom of each of said letters or the endorsements on said letters.

(Filed, marked "Exhibit H. S. C. No. 2.")

HORACE S. CUMMINGS, being called for cross-examination, was interrogated and testified as follows:

Cross-examination.

By Mr. JOHNSTON:

Q. Mr. Cummings, some time ago we called in writing for the production of certain letters and dates, all of which appear from the memorandum. Are you ready to produce the letters called for?

A. I produced all that I have or all that I know of in existence.

Q. Have you produced any of the letters that we made a call for?

A. I have produced the following letters that were called for: that of August 13, 1889; September 24, 1889; October 4, 1889. The others that were called for I cannot find.

Q. Mr. Cummings, you have stated that you are a member of several bars of the various courts in the country. Please state the courts of the District of Columbia of which you are a member and when you were admitted to practice in those courts.

A. I never was admitted to practice in the District courts in the District of Columbia.

Q. State, if you please, whether or not the defendant in this cause ever urged you to become a member of the supreme court of the District of Columbia, of the Supreme Court of the United States, or the Court of Claims.

A. He never did to my knowledge.

Q. Would you be likely to recall it if he had urged you to do so?

A. I think I would.

Q. Did he ever offer to move your admission in any of the courts that I have named?

A. Not that I know of.

Q. Did you ever pretend or say that you were a member of the Court of Claims' bar?

A. I was admitted by the order of Judge Drake, in 1864, on a case—I can't tell the name, but it was a case involving the pay of certain naval people.

Q. Can you state why your name does not appear upon the printed roll of the Court of Claims?

A. I do not know but what it does. I do not know.

Q. Well, you may state your reasons, Mr. Cummings, that you gave to your late partner why you did not wish to become a member of any of the courts that I have named.

A. For the reason that I did not anticipate going into any busi-

ness before the courts of the District, as I had been advised by an old and experienced lawyer that if I was going to make a specialty of Government practice that I had better attend to that entirely.

Q. Then you simply proposed to give your entire attention to claims before the departments and not any that might arise in the various courts?

A. In the various District courts, yes, sir; and I proposed to be admitted to the Supreme Court of the United States whenever there was any occasion to practice before that court.

Q. Were you ever admitted before the court of Alabama claims?

A. I never was.

Q. Did you not have some claims before that court?

A. I procured claims before that court; but Mr. Baker expressed a disposition or desire, if I may so express it, to practice in open court before the judges, and I was not willing to take charge of the active practice in the Alabama claims.

Q. That was your reason then?

A. Certainly; if he was not there to take charge of it I would have taken charge of it myself.

Q. What reason can you give for refusing to become a member of the bar of the Supreme Court of the United States?

A. Because I had never had any case that called me before that court.

Q. Now, Mr. Cummings, tell us how many cases you have ever argued in the Court of Claims.

A. I think it was four (4) cases in 1864. The argument consisted in proving the cases, submitting the cases, and asking for a judgment.

Q. What time did you resign your office in the Government?

A. 1873.

Q. Then you were a clerk in the department when you argued the case in the Court of Claims?

A. If I said '64 I mean '74.

Q. What motion and in what cases did you argue in the Court of Claims during the existence of the partnership between you and the defendant?

A. None whatever except these cases. I would take the testimony. I would apply to the then justice of the court in chambers for certain orders and certain rules, but I never appeared before the court to argue a case.

Q. Can you tell in what cases and in what courts you ever personally took the testimony in?

A. No; I cannot tell.

Q. Did you ever take any in any case pending in any of the courts?

A. I have procured testimony in the Court of Claims. I can't tell you in what cases they were.

Q. I mean did you yourself appear in any cases in the Court of Claims or in any other of the courts of the United States and examine and cross-examine the witnesses in cases pending?

A. I did not.

Q Did you ever during the partnership employ any attorney to help you in your cases without the consent of the defendant or advising him about that?

A. I don't think I did; not to my recollection.

Q. Let me see if I can refresh your recollection. Did you not employ Lewis Abraham in the Huestis case in the Court of Claims?

A. I did, with Mr. Baker's knowledge and consent, because Mr. Abraham held himself out as an expert in patents. This was the question involving the use of a patent by the United States, and I told Mr. Baker that these patents were something that I never knew anything about, and I thought it was the best way, to employ Mr. Abrahams if he was willing to take it on a contingent fee.

Q. Did Mr. Abraham take the testimony of the various witnesses in that case; if not, who did?

A. I think he did.

Q. You are not positive about that?

A. I am not positive about that. I think he did. I won't be positive whether he took it or got somebody else to take it.

Q. Well, what part, if any, did you take in a case settled in the Treasury Department in which John M. Vale was connected—and give the name of the case—and how much fee or compensation did you receive in that case?

A. I don't know. I don't remember any such case.

Q. Did you ever divide or offer to divide that fee or compensation with your late partner?

A. I don't recall what the case is.

Q. You have no recollection of any such case, then, in which you were connected with Vale?

A. I have not any such recollection. I don't recall who Mr. Vale is.

Q. Are you acquainted with Mr. Vale?

A. I don't know any attorney by that name.

Q. Can you recall, Mr. Cummings, any case or claim in which you received money for your services while in partnership with the defendant or in cases received while such partner which you did not divide with him, other than those included in his suit at law against you?

A. I do not, in any cases where I ever received any fee.

Q. You were, I believe, at the time you were in partnership with the defendant an assignee of Henry D. Cook?

A. I was.

Q. Did you consult or obtain the permission of your then partner to become the assignee in that case?

A. I did it with his knowledge and he never made any objection.

Q. Do you recall what conversation passed between you and the defendant in reference to your taking the assigneeship of Henry D. Cook?

A. I do not remember any conversation on the matter.

Q. Was there anything said about what should become of the fees that you would receive as assignee; whether that should be con-

sidered partnership fees or whether you would receive the whole of them?

A. As I recollect it, at first there was nothing said about the matter of fees. When Mr. Cook failed he was owing me a large amount of money and I took the assigneeship for the purpose of seeing if by means of the assigneeship and of the fees coming therefrom I could in any way repay myself the amount that was due me.

Q. You then desired to pay yourself the loss incurred by the failure of Cook from the commissions as assignee?

A. Yes, sir.

Q. How long were you engaged as assignee?

A. I am still assignee.

Q. During the copartnership how much time did you give the duties of assignee?

A. It is entirely impossible to state.

Q. Can you say whether you gave one-half of your time?

A. No; I should not suppose I gave one-tenth part of my time.

Q. Then, what were you doing the rest of the time?

A. The same as Mr. Baker was doing and the same that I always had done ever since I had been in business.

Q. Do you recall how much commission you received as assignee of the failure of Henry D. Cook?

A. I have received none as yet.

Q. The estate is not settled up yet?

A. No; but I can state that the estate is indebted to me now largely.

Q. The estate is indebted to you by reason of your having become a depositor in the bank at the time of the failure of Henry D. Cook?

A. Certainly, and as the individual creditor of Mr. Cook.

Q. How much are those fees; how much are you entitled to as fees received from this assigneeship?

A. It is impossible for me to state.

Q. Can you approximate?

A. The sum that I had expected to charge H. D. Cook & Co. for services in the assigneeship was $15,000.00, which was to pay for services and the commissions on the collections and payments; that sum was fixed by me at that amount on the advice of Mr. John C. Bullett, of Philadelphia, who thought it was a reasonable amount.

Q. I hand you a paper and ask you if that is your report in that case?

A. It is, most decidedly.

Mr. JOHNSTON: I offer that paper in evidence.

(Filed, marked "Exhibit H. M. B. No. 1.")

Q. Mr. Cummings, when you entered into partnership with the defendant did you stipulate for any exception from the partnership contract for anything besides the cases that you had then pending?

A. My understanding was that I was to have the fees in cases that I had on hand, for which I held powers of attorney at the time

and on which I had been at work, and which, to a great extent, were already prepared, and the labor after that was simply to procure a decision of the department. We also had the right to take our own individual matters and to conduct them for our own benefit and our own emolument.

Q. My question was, did you stipulate for any exceptions from the partnership contract for anything besides the cases you then had pending?

(The WITNESS:) Please repeat that.

Q. Did you stipulate as an exception to the contract any other case or claim than those you then had pending when the partnership was formed?

A. The exception was this: That we had the right to take matters in which we were individually interested and to have matters of our own—that is, if Mr. Baker had a case arising out of a real-estate transaction or if he had an action against this person or that person he could take it and conduct it in his own behalf, and he was to have all the profits that came from it, and I had the same.

Q. My question, Mr. Cummings, does not refer to any private transaction or deals in real estate or stocks or anything of that kind individually, but it was as to any stipulation touching any case or claim against the Government or against anybody that might have a case in court outside of those cases then pending which you had?

A. I don't think there was any such a stipulation, except we had a right to take individual cases for ourselves, but when we took them it was known to each other.

Q. Were those claims against the Government?

A. Any kind of claims. For instance, I will say this, that Mr. Baker wanted to go into the pension business, and I said I did not want to go into it, and I said, "If you want to take those cases and go in the pension business you are at liberty to do it and make all you can."

Q. Now, Mr. Cummings, was it not true that nothing was excepted from the partnership except the cases you then had pending, but, on the contrary, every claim or case that any one had against the Government that was brought into the partnership was to be treated as partnership cases, it made no difference who obtained the case?

A. That was the contract, as a rule, but we both had the right to have individual cases.

Q. You did, then, while you were a partner, obtain cases which you treated as individual cases?

A. I do not recollect that I did, but we had the right to.

Q. Was the Heustis case then pending when this partnership was formed?

A. It was, I think; I think it was pending.

Q. Did you have an agreement with the defendant that he had an interest in that case?

A. I did.

Q. Have you, since the dissolution of the partnership with the

defendant, ever collected or received any fees or compensation in such cases received or begun by you during the partnership?

A. Not one dollar, to my knowledge.

Q. What interest did you agree with the defendant that he should have in the Heustis case?

A. One-half.

Q. Now state, if you please, what cases that were unsettled at the date of the dissolution of the partnership which were received during that partnership, the name and amount of each and its present condition; also the fee to be received in each case.

A. I cannot state.

Q. Have you any knowledge on the subject?

A. I could by consulting my memoranda.

Q. You can make a statement of them?

A. I think I can.

Mr. JOHNSTON: I call for the schedule of them and file them at the next meeting.

Q. (Continuing:) Have any of those cases or claims been paid since the dissolution of the partnership?

A. None that I know of.

Q. Have you any means of ascertaining that they have been paid since the dissolution?

A. If they had been I think I would have known it.

Q. Mr. Cummings, did not the defendant suggest a dissolution of this partnership in April, 1889?

A. I do not recollect that he did.

Q. Have you any recollection why he urged the dissolution?

A. I have not; there never was any proposition to my knowledge.

Q. Do you mean to say there never was any offer by Mr. Baker to dissolve this partnership or that you don't recollect of any such offer?

A. Well, I should say that I would know of any offer on his part to dissolve.

Q. Now, Mr. Cummings, was not the sale to the defendant of your interest in the so-called "inspector cases" one of the conditions upon which he consented to remain in the partnership with you in other matters?

A. Not at all, to my knowledge.

Q. You are positive of that?

A. I am positive of it.

Q. Did you ever express to him any dissatisfaction with the sale of 1886 until 1889, when he insisted upon an account of fees and expenses and a dissolution of the partnership in other cases?

A. I had no reason to be dissatisfied with the sale to Mr. Baker until the summer of 1888, nearly two years after the assignment was made, and it was only until I discovered that there were over $200,000.00 of cases, when, according to his representation to me, there was only $80,000.00.

Q. What was the date of the last general settlement you had with the defendant prior to 1889?

A. I cannot state.

Q. You mean that you have forgotten?

A. I have forgotten.

Q. Mr. Cummings, state why the defendant urged you for a settlement at various times between that time and 1889.

The WITNESS: What is that question?

Q. Had the defendant urged you for a settlement at various times between that and 1889?

A. Only for a settlement of expenses.

Q. Now, you can state why you did not join him in such a settlement.

A. If I recollect, we did have a settlement in '87 of expenses—possibly '88—and prior to 1888 I considered that Mr. Baker was in debt to me, and a balance was on my side rather then his.

Q. How did you consider he was in debt to you?

A. I will explain that. In 1875, I think, Mr. Baker wanted me to loan $1,000 to a friend of his in the Treasury, a Mr. Hellen, and he said that he would look after the money, and that if it was paid there would be a profit out of it, and that he would become responsible for one-half of it. I borrowed the money and loaned it to Mr. Hellen, and there was an order given upon the executor of an estate in which Mr. Hellen was interested that they would pay that order. He also had a life insurance. When the year was up and when the note was due the executors were not ready to pay that amount, although they, as I recollect, *they* had accepted that order. Suddenly Mr. Hellen died. We supposed that we would be made good from his life insurance, as that was one of the conditions that he made when the money was loaned to him, and to Mr. Baker's astonishment, as well as my own, we found that the life insurance had run out, and the money was not paid by the life insurance company, as they were not under obligation to pay the same. I spoke to Mr. Baker once or twice, and we kept hanging on with the idea that the amount might be made out of the estate in which Mr. Hellen was interested, and I put the matter in the hands of Mr. Linden Kent—I think it was Mr. Linden Kent—to see if the money could be made, and it could not be, and finally, and when I considered that Mr. Baker was bound to reimburse me for one-half of that money and the interest on the same—finally, in 1888, though I had said nothing to him in the meantime for several years, in 1888, after he had received this large amount of money, of fees in the inspector cases, he asked me one day, How about the Hellen matter? "Well," says I, "what?" "Well," says he, "I believe I owe you something on that." "Well," says I, "I believe you do." "Well," says he, "When you reckon up the amount with interest to date I will give you a check for one-half of it;" and that amounted to a pretty large sum of money, inasmuch as it had been running on interest for about 13 years. That amount was as much as I could owe Mr. Baker on account of the expenses, and therefore I considered that I owed him nothing on that account.

Mr. JOHNSTON: All of this answer is objected to as not responsive to the question.

By Mr. JOHNSTON:

Q. Now, let us get back. Was that a partnership transaction or an individual transaction?

A. It was a partnership transaction, because I made the loan at his suggestion, as I did not know Mr. Hellen.

Q. You then treated it as a partnership transaction for that reason?

A. Because it was upon his statement that he would become responsible for one-half of it.

Q. For that reason you treated it as a partnership transaction?

A. I did.

Q. Mr. Baker paid one-half, as he agreed to do, with interest?

A. Yes, sir; after a lapse of twelve years from the time that note came due.

Q. Did you ever say to the defendant in reply, when he urged a settlement, that you did not want one, "I am afraid I owe you money," or words to that effect?

A. No, sir.

Q. In your evidence-in-chief you say, "We discovered that the Government was not paying the inspectors of customs their full legal salary." Please state specifically what part you individually had in that discovery—what part you took individually in that discovery.

A. Mr. Baker had been conversant with the laws governing customs matters for many years, because he was engaged in the customs devision in the Treasury. In reading the Revised Statutes of 1874 he read this law——

Mr. JOHNSTON: You will oblige me if you will answer the question.

The WITNESS: I am going to tell you, as you will see. He then said that he thought that there was money in that, and he said, "What shall we do?" and we came to the conclusion that the only way to do was to wait until time enough had elapsed, so that there would be an amount enough accrued under this law to the claimants. When some months had elapsed he said that he did not know how to go to work to reach the matter—as to what the Treasury would think of them. I said I thought I could easily find out. I went to Mr. Conent, who was an assistant secretary of the Treasury, and showed him that law. It was at his residence, on Capitol Hill. Mr. Conent looked at it and said, "Well, have you fellows found that out?" I said, "Yes, we have." I said, "What do you think of it?" "Well," says he, "I think there will be a chance for a claim against the Government; but," he says, "we, of course, shall oppose it as far as we can, because we don't think that that was the intention of Congress when they ratified that revision." And he said, as a result, "Come up tomorrow morning and I will introduce you to Mr. Bristoe," or "we will see Mr. Bristoe." I went up the next morning and I saw Mr. Bristoe, and we had some talk about

it, and he said, "Well, of course we do not want to pay these claims"——

Mr. JOHNSTON: All of this is objected to as hearsay, and the witness is instructed to answer the question.

A. (Continuing:) And I will also say that when I was talking with Mr. Conent about this I said, "Now, I think Mr. Baker had better come in with me, because he understands this matter better than I do," and he says, "Don't have Mr. Baker come." I said, "Why?" He says, "Because Mr. Bristoe don't like Mr. Baker." The result of the conversation and the interview was very pleasant, and I came back and told Mr. Baker what the result of the interview was, and he was very much pleased.

Q. Now, Mr. Cummings, please answer what part you took in discovering these cases.

A. The finding out that these claims existed was nothing but simply reading the act of Congress—knowing what the old act was.

Q. Did you read this act?

A. I did.

Q. Did Mr. Baker consult with you about it first or you with Mr. Baker?

A. He spoke to me about it first.

Q. You never knew about it until your attention was directed to it by Mr. Baker. Then all you did was to run after Mr. Bristoe and to the Secretary and have a talk with them about it?

A. I did, sir.

Q. What else did you do?

A. I wrote as many letters as Mr. Baker did, because we wrote them together and in the firm name. The first powers of attorney were in the names of Cummings & Baker. I would write letters and Mr. Baker would write letters, and we would send them out, and I did all the work that I had to do and all the work that Mr. Baker ever asked me to do, not only then, but at all other times.

A. Am I to understand that you personally wrote as many letters as Mr. Baker?

A. I did not say "personally," but I say that I wrote all that he asked me to do.

Q. You didn't do anything except what he asked you to do?

A. He had entire control of the cases.

Q. Did you know anything about them at all?

A. Only as he told me of the status of each case, because he kept the memorandum and all the books in his own possession, under lock and key.

Q. Did you ever see any of the letters that was sent in reply to the letters that you wrote?

A. I have seen many of them. Mr. Baker would be absent for weeks at a time, and I would attend to all the correspondence then, as far as I could.

Q. Do you mean to say, Mr. Cummings, that from the beginning to the end of the partnership, touching these inspector cases that

you didn't know anything about them or didn't see the powers of attorney or papers except as Mr. Baker told you?

A. Except as he showed them to me, because he kept them in his desk, under lock and key.

Q. Don't you know his desk was open and all the papers connected with the partnership transaction all the time?

A. That part of the desk where he kept all these contracts was always locked. He kept them in the lower part of the desk. He had out one, two, or perhaps three books containing all the contracts, powers of attorney, &c.

Q. Now, Mr. Cummings, there was a photolithographed letter sent?

A. Yes, sir.

Q. Please state when the photolithographed letter was sent out how many such different letters were sent; also what you did in connection with securing the cases, preparing, arguing, or settling them.

A. In regard to the letters, at first we wrote the letters by hand; then we found that it took a good deal of work and manual labor; we then had them photolithographed, and he woul- take a list and I would take a list and we would both send our letters filled with powers of attorney. I would fill out powers of attorney and he would fill out powers of attorney and this photolithographed copy, with the power of attorney enclosed, we would put in an envelope and he would direct them and I would direct them, and in a great many cases the direction would be written by some person that Mr. Baker had hired for that purpose.

Q. Did not the defendant ask you for assistance in those cases on various occasions prior to September 6th, 1886, and tried to get you to generally help him with them? Did you do so whenever you could?

Q. He never asked me for any assistance in any case but that I not only willingly but readily granted under all circumstances.

Q. You say in your evidence-in-chief that the defendant locked his desk?

A. Yes, sir.

Q. Did he keep his desk locked any more after the inspector cases were in hand than he did before?

A. Not at all.

Q. No difference?

A. No, sir.

Q. Was there any difference in his keeping his desk locked before the sale than after the sale of the inspector cases?

A. None at all. He always kept the desk locked, and if it was not locked I had no business to look into it.

Q. You are not prepared to say that the key was not taken out of the door?

A. I don't think the key was in the door, and if it had been I had no business looking in his desk.

Q. Were not the parts of his desk containing the books and

papers relating to the inspector cases usually unlocked during office hours?

A. I think all the documents containing the powers of attorney or the contracts were in that part which was always locked.

Q. Do you mean to be understood as saying that the powers of attorney were kept by Mr. Baker locked up?

A. I have always supposed so, as far as I knew.

Q. Don't you know the fact, Mr. Cummings, as a practitioner in the department and a partner of this firm, that this was firm matter?

A. Certainly; but very often we would have powers of attorney on hand a long time before we filed the claim.

Q. Was that the case in these cases?

A. I think it was, in some cases.

Q. Are you positive that that was the case in the inspector cases?

A. I am quite positive, for in 1883, when the department would seem slow in adjudicating them or because Congress didn't seem inclined to make the appropriation, that we didn't think it was best to file many more cases in the department at that time; they were retained in the office then.

Q. Were not the keys to those parts of his desk containing the books and papers relating to the inspector cases usually during office hours either laying on the top of the desk or hanging in some of the locks, they keys to that part?

A. The books that he refers to were the Registers of the Treasury——

Mr. JOHNSTON: I am not asking you that.

A. (Continuing:) If those are the books that are referred to, I think he used to keep them in some side of his desk and some of them laid on the top of his desk.

Q. Were not the keys to those parts of his desk containing the books and papers relating to the inspector cases usually during office hours either laying on the top of the desk or hanging in some of the locks?

A. They may have been; but if the desk was unlocked I should consider that I had no right to go into Mr. Baker's desk and overhaul his papers.

Q. You can answer that question neither in the affirmative or negative?

A. Whether it was locked or unlocked, I should consider I had no right to go into his desk to overhaul papers.

Q. My question was, didn't the keys remain in the locks or upon the desk or those parts of the desk containing the papers I have mentioned?

A. I can't say. I don't think they were.

Q. Were not the schedules of payment made by inspectors kept in the open part of the safe owned by you and to which at all times you had access?

A. The schedule of some of the payments were, but whether all I do not know.

Q. They might all have been there, for what you know?

A. They might; but I will explain this in regard to the safe: I had a safe in there; I took one part and Mr. Baker took one part, and he used to keep his papers in certain places in the safe, but I considered that I had no right to interfere with his papers.

Q. You do not seem to comprehend my question. It is this: Were not the schedules of payments made in the inspector cases kept in the open part of the safe? I am not speaking of the private parts of the safe either one of you had.

A. Mr. Baker had a certain portion of the open parts of the safe and I had the same. What he had in the open parts of his I don't know. I presume that he had the schedules in there.

Q. Don't you know that these schedules were in the open parts of the safe?

A. I don't know. They might have been.

Q. Did you ever see any of them there?

A. I have seen papers that I supposed were schedules in there. The amount I don't know.

Q. Was there ever any attempt on the part of Mr. Baker to prevent your knowing all about those cases according to your own sweet will prior to the date you sold your interest in them, as per your receipt dated September 6th, 1886? If so, give particulars.

A. Mr. Baker was always ready to answer in regard to any specific case that I might ask him, as when he handed me the big bundle of powers of attorney, somewheres about the middle of August or the latter part of August, to examine into it, he said, "You can look them over and see what you think of them, and if there is any case you don't understand I will explain it to you."

Q. You didn't understand my question. Were you ever denied any information concerning these claims by the defendant prior to that date? If so, state how and when.

A. He never denied me any information in any specific case, but the only information I could get in a general way was that there were $20,000 to $22,000 that would be due on that lot of cases, and there would be probably over $75,000 to $80,000 more of cases to be collected. That is the nearest of any information on the subject of the inspector cases that I could ever get.

Q. From the first case that was obtained in the inspector cases down to the date of the dissolution of the partnership, what case did you inquire of Mr. Baker touching anything connected with them or any information you desired to know?

A. That I cannot tell, but often I would ask him about this particular case or that particular case, and very often when Mr. Baker would be away I would receive letters and I would write to Mr. Baker, asking him, or else I would ask him how the case stood, or, if it was a pressing case, I would simply go over to the department and get the standing of the case and write the man out.

Q. Well, you had all the information in the office necessary to answer any letter without referring to Mr. Baker, did you not?

A. No, sir.

Q. Wherein was that information lacking?

A. Because I did not know anything about the particular case, except as a man would write and say that he had a claim against the United States for arrears of salary as inspector, and he would want information to know how his case stood. I could not tell or know anything about it until I went over to the department and found out as to the status of the case, without Mr. Baker was present, and in those cases I would hand the letter over to Mr. Baker and he would attend to it.

Q. Then you could not answer these letters because you had not kept yourself advised how these cases progressed, and you exercised yourself to that extent, did you, to advise yourself?

A. I could not.

Q. Why?

A. Simply because it was a matter under Mr. Baker's own control, and if I would ask him he would say, "I will answer that," and he would write the letter himself.

Q. Why, as a partner, did you not keep pace with all the information necessary to give your clients the information desired?

A. For this reason, that when we went into partners- we divided up the business; Mr. Baker took certain cases and I took a certain class of cases—in the admiralty cases and in the vessel cases—all that I took, and Mr. Baker knew nothing about them. He took the inspector cases, for he knew all about them. He had been a clerk in the Treasury and knew the rules of the revenue law and what the custom law was, and I could not by any amount of study become as posted as Mr. Baker was.

Q. Now, Mr. Cummings, you started out in the beginning knowing as much as Mr. Baker and doing as much work as Mr. Baker and writing as many letters as Mr. Baker. State, then, how it was that your memory had become a blank as to the condition of these cases from the first—that you never gave information that clients would write for.

A. If you understand these cases you will know that an inspector—when the power of attorney and the contract annexed was received Mr. Baker would take them and he would look through the Treasury Registers and get what other information he could from the department and see what, if any, money was due as each case came. When he was satisfied that the man had a claim he would write a letter to the Treasury Department, stating that as attorney of this person, whose power of attorney was annexed or enclosed, he applied for the arrears of salary due this person under the Revised Statutes for performing the duties of an inspector of customs between this day and that day, and enclose the power of attorney, and he kept track of them. I probably knew, if not as much as Mr. Baker, I knew enough to be posted in regard to these claims, but as to the condition of each claim I knew nothing, because Mr. Baker kept track of them the same — I did in my vessel cases that I had charge of. I presume that Mr. Baker knew very little of the standing of each case except as I informed him and as he asked me.

Mr. JOHNSTON: This answer is objected to and the question repeated.

Q. Now, Mr. Cummings, you started out in the beginning knowing as much as Mr. Baker and doing as much work as Mr. Baker and writing as many letters as Mr. Baker. State, then, how it was that your memory had become a blank as to the condition of these cases from the first—that you never gave information that clients would write for.

A. I didn't say that I did as much work as Mr. Baker or that I wrote as many letters as Mr. Baker, but I simply say that I did all that Mr. Baker ever asked or requested me to do.

Q. How is it that you didn't know anything about the business?

A. Simply because Mr. Baker took exclusive control of them.

Q. Then you thought it was an easy job when clients wrote for information to refer the matte. 'o Mr. Baker for reply than to go to the Treasury Department and get the information?

A. Because Mr. Baker knew the information and could probably answer without going to the department.

Q. Did you not want to know the information yourself?

A. Certainly; but I had my other business. For instance, the first year after we had gotten an appropriation for these inspector cases, in 1876, I won cases in which I took $28,000 of fees, in which Mr. Baker had one-half; and I will say that they were cases in which I had the power of attorney and contract and had nearly completed the cases ready for settlement prior to the time that Mr. Baker came into the firm, and cases which, according to a strict construction of the contract, he would have had no right to the fees at all, but I simply gave him one-half of those fees.

Q. Name the cases, please.

A. It was the coal case in New Orleans and the St. Charles and Anglo-American case—two steamers in New Orleans.

Q. Mr. Cummings, inasmuch as you never personally superintended the taking of testimony in any of these cases that were either in the department or in the Court of Claims and never argued any of them, was it not astonishing that Mr. Baker should know something about all the cases?

Q. The WITNESS: About what case?

Mr. JOHNSTON: About all of the cases.

A. He never had anything to do with any cases that I had except this coal case that I have mentioned. I learned that the original voucher in that case was in the hands of Gen. Charles Ewing, who was the successor in business of Browning & Ewing. I, knowing that Mr. Baker knew the people connected with Mr. Charles Ewing, wrote to him from Pittsburgh to please go at once to Charles Ewing and see if he could not get the old papers in the New Orleans coal case, as they would be of great value to us. I wrote to him to do it at once, as I was delayed in Pittsburgh several days. When I got back I found that he had gotten those papers. But I will say, in regard to the case, that I never asked Mr. Baker's help or anybody's assistance in any case that he ever had any interest in any of the

departments at any time, with this one exception, in the coal case, in getting the voucher, and also in the Philbrook land case, that we had in the Interior Department, known as "The Little Rock case," in which I did a great deal of work and Mr. Baker did work, but I did far the most of it, and it was tried in the district court of Arkansas and came to the Supreme Court on appeal. I wrote the brief in that case and Mr. Baker made some amendments, and he, having been admitted to the Supreme Court of the United States, *he* argued the case there, and we lost it, and I think we ought not to have lost it.

Q. Did Mr. Baker ask you to be admitted to the Supreme Court of the United States and argue that case yourself?

A. He may or may not, but I presume he may have done it. I don't know.

Q. Mr. Cummings, what cases, if any, did you have in the Court of Claims that required argument?

A. None.

Q. Did you have any cases there that required the taking of testimony?

A. No, sir.

Q. What cases did you have in the department that required argument, and how many of the cases did you argue?

A. A great many, and I argued every case in the department.

Q. The inspector cases too?

A. No, sir; I say with that exception, because that was Mr. Baker's own part of the work.

Q. Did you ever argue any of the moiety cases there?

A. No, sir.

Q. Then you didn't argue them all?

A. That is part of the custom work. Mr. Baker took charge of the customs business.

Q. That includes the inspector cases?

A. Yes, sir.

Q. That was the largest amount of business you had, was it?

A. Yes, sir; for 1881 and after.

Q. Mr. Cummings, I wish you would tell us how it is that you manifested such general apathy in the inspector cases, about the largest amount of business you had.

A. I never manifested any apathy; on the contrary, I was anxious and agreed to do all I could, and to always do, under all circumstances, everything to promote the interest of the business, and if I did not do more it was just simply because Mr. Baker would not tell me what to do.

Q. Can you tell us what you ever did do?

A. I wrote letters and powers of attorney and trotted over to the department when Mr. Baker was not there, and in 1878, 1886, and in 1888 he was away a great deal, and in 1887, he was away considerable of the time, but in 1887, as I recollect, there was but very little done, because Congress had refused to make appropriation for the years 1886 and 1887.

Q. Is that all you did?

A. I did all there was to be done.

Q. Mr. Cummings, did you get all the books and papers connected with the inspector cases which were delivered to you, as stated in the answer of the defendant on pages 16 and 17 of the printed record?

A. I don't know what that refers to.

At this point an adjournment was taken until Thursday, June 2, 1892, at 3 o'clock p. m.

THURSDAY, *June* 2, 1892, at 3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel for the respective parties.

Whereupon HORACE S. CUMMINGS, being recalled, was further interrogated.

By Mr. JOHNSTON:

Q. (The defendant, having taken with him Exhibit H. S. C. No. 2 for the purpose of ascertaining the correctness of the amount on the back of each letter, now returns the said exhibit and admits that the amounts of the claim on the back of said letters are correct and represent the amount allowed in each case.)

(It is further agreed that the letter dated December 1st, 1879, presenting the claim of David S. Beetle, of Edgartown, Massachusetts, was not allowed upon the said application, but upon a subsequent application and a power of attorney dated the 12th of April, 1888, and that the letter dated April 16, 1888, presenting the claim of Samuel E. Johnston, was filed in the department subsequent to the execution of the paper dated September 6, 1886, and claimed by the plaintiff to be the bill of sale to defendant Baker, and that the amount allowed on said subsequent application was the sum of $3,698.53.)

Q. Mr. Cummings, did you get all the books and papers connected with the inspector cases which were delivered to you, as stated in the answer of the defendant, on pages 16 and 17 of the printed record?

A. I did not receive all the books and papers mentioned by the defendant in his answer to the bill. Some time in August, 1886, Mr. Baker gave me three large scrap books, containing in the vicinity of one thousand contracts. He gave me a number of Treasury Registers. He gave me a list of cases that had been filed in the department, but which were either tied up or disallowed and which he called "doubtful." He gave me a list of cases in which the fees were of other amounts than the regular amount of twenty-five per cent. He gave me a list of cases, also, of those persons who had claims, but which he had been unsuccessful in getting, but I never saw any list of cases that were filed and was not in the department at that time. Those papers I took home. The second morning after receiving the papers Mr. Baker asked me if I had come to any conclusion. I told him that I had not and did not see as I could, be-

cause there was nothing in the papers to show whether the claim of this person or that person consisted of an amount of $1 or $1,000, and each case involved a calculation and an inquiry from him and an examination of every claim covered by the whole thousand powers of attorney. Many of the cases had had one allowance, some had had two, and there was nothing to show in the papers what the case amounted to generally, in the whole or individually. I kept the papers about a week, when I returned them to the office and told Mr. Baker that I could not make any calculation upon them without we sat down and went through each case, but that he (Mr. Baker) knew how the cases stood and that he could give me an approximate amount of what cases were filed and the probable amount of the allowance hereafter, and it was upon his statement to me then, viz., that there was probably $75,000.00 and possibly $80,000.00 more of claims, that I acted.

Q. What books and papers mentioned in the pages 16 and 17 of the printed record that you didn't get?

A. I never received any list of cases then pending in the Treasury Department except the list of cases that he called "hung-up cases" or "doubtful cases" or "suspended cases."

Q. Will you name all the books and papers that you didn't get?

A. Well, I could not name all the papers that I didn't get, because that would include a great many. I have named all the papers that I did get.

Q. Now what papers were there that you didn't get that would enable you to go over satisfactorily to show what was the amount of these claims?

A. I could not state because I do not know whether there were any papers or not that would enable me to form an adequate idea of the amount of these claims.

Q. Are you able to say that Mr. Baker didn't give you all of the papers in those inspector cases?

A. I cannot say, because I do not know what list he had. I have stated all that he gave me.

Q. Were there any other papers necessary in those cases to enable you to reach a conclusion as to the results and the amounts of those cases?

A. There were no papers given me that would enable me to reach any conclusion except, as I have stated, to take each case and the whole mass of contracts individually and go through it and make a calculation, find out from Mr. Baker what had been allowed, and to ask him individually in regard to each case.

Q. Then, as I understand you, Mr. Cummings, none of the papers or books handed you by Mr. Baker would give you any information at all as to the character and position and results of those cases?

A. There was no doubt as to the results of the cases if the facts and the amount could be arrived at. Those could only be arrived at by the individual calculation in each case, and I had nothing to show whether there had been previous allowances, whether there

was anything in the case why they should not receive the whole *per diem* as provided by statute.

Q. When the cases came into the office were they put into a book, with the name and with the amount of the claim*ant?*

A. No, sir.

Q. How were those cases preserved so as to give you the information whose cases they were and the date of them and the amounts that they claimed?

A. Mr. Baker knows. I can't say, because he kept them entirely in his own jurisdiction.

Q. Did you know that there were such papers in the office?

A. If there was I never saw them.

Q. You did not?

A. I don't know. If there were I never saw them. When we went into business together we kept no books, except a book that I had prior to Mr. Baker's coming in with me; but those things never were entered upon those books.

Q. You never kept a book of them at all?

A. Except as Mr. Baker kept them, on a sheet of paper in his own possession; but in book form I have never seen them.

Q. Did you ever have those sheets of paper that you have mentioned as the way in which they were kept by Mr. Baker?

A. I may have seen some of them, but never to examine them, except for some individual case when Mr. Baker would ask my assistance.

Q. You went all over the papers and books that Mr. Baker had given you while they were in your possession, didn't you?

A. I did not.

Q. Did you examine any of them?

A. I examined the powers of attorney, some of them. I examined the Treasury Register. I looked them over, but I saw at once the uselessness, except at the expense of a very long calculation, involving weeks of time, of reaching any adequate idea of the amount or value of these claims. I knew that Mr. Baker knew, and that was sufficient for me.

Q. Well, then, why did you take the papers and pretend to examine them if you did not do it?

A. I did not pretend to examine them. He asked me to take the papers and I took them home to examine them, and when I saw what they were I saw that it was useless for me to undertake to make a calculation upon the amount of those cases, as I would have to consult Mr. Baker in every individual case.

Q. What did Mr. Baker want you to examine?

A. I don't know.

Q. What did he tell you when he handed you the papers?

A. He just said, "Look them over."

Q. Did you ask him for the papers?

A. I did not.

Q. He voluntarily handed you the papers as being papers connected with the inspector cases, didn't he?

A. I suppose that there was something in there that would give an adequate idea as to what the amount of the claims would be.

Q. Mr. Cummings, did you ever examine the House executive documents of the first session of the 49th Congress No. 70 and 225, showing the whole amount of allowances paid to inspectors and being the documents handed to you by Mr. Baker?

A. I can't recognize it by that description.

Q. Well, can you recognize any document among the papers handed to you by Mr. Baker being a report in the House of Representatives touching the inspector cases?

A. I cannot by that name, but if he will show me the papers I will say at once.

Q. Can you recollect any paper by any name that you may please to baptize it showing any case in the House of Representatives?

A. If Mr. Baker will say what papers he refers to——

Q. Showing the whole number of the allowances in favor of the inspectors?

A. If he called it to my attention I examined it, because I examined whatever he gave me.

Q. Now, did you at any time ask Mr. Baker to go over these cases with you?

A. I did not.

Q. Why didn't you do it?

A. Because I asked him what the whole amount was, and he said from $75,000.00 to $80,000.00 more of cases, and I took his representation.

Q. You were satisfied with that without going any further into it?

A. I was satisfied that that was true.

Q. You have said that some of the letters written in the inspector cases were written by hired persons. Please state who was in the office that did such work.

A. A Miss Sarah A. Latham came there and was engaged by us and paid for writing these letters, and I will say, also, as far as my observation went, that a large number of these letters, copies of which were introduced and admitted, was in Mrs. Latham's handwriting; at any rate, in the handwriting of a lady and not in Mr. Baker's handwriting.

Q. What does the power of attorney in each one of these cases show?

The WITNESS: What do you mean?

Mr. JOHNTSON: Does it state the amount that the claimant claims?

A. No, sir.

Q. Does it state the amount of fees that you were to receive?

A. I will state this: I prepared the form of power of attorney; it was the abbreviated form from that in general use, printed on the same sheet as a contract for fees, in the shape of a letter directed to Mr. Baker and signed by the claimant, but there is nothing in the power of attorney to show what the amount of the claim

was, except for the arrears of salary due him for performing the duties of inspector of customs, and the same phraseology was used in the contract annexed to the power of attorney, which went on to provide that the attorney should have a contingent fee of twenty-five per cent. in case of success.

Q. How did you ascertain the amount that each person claimed?

A. Mr. Baker ascertained that by taking the information that he had gathered from various sources—Treasury Registers and otherwise—including the time that the man was in service, and seeing the amount that he had received, then calculating the amount that he was entitled to receive under the Revised Statutes, and the difference was the amount that was claimed. Then the whole case was proved up by documentary or record evidence and there was no testimony taken orally; no testimony taken orally, but in many cases there were filed affidavits of the claimant, stating his services, and that he was on duty at all times and either did service or was ready and present to do service. Many of those affidavits were prepared. I know myself that I typewrited a great many of them that were of the same character except as to the name of the claimant, the time, and the location.

Q. What I wish to know is this: Were not the several amounts that were found to be due to the respective inspectors made out from the report or documentary evidence in the office of the Treasury Department and the Revised Statutes of the United States?

A. I expect that they were.

Q. You know of no other mode of ascertaining the amount of services for which they were to be paid than that I have just mentioned?

A. I know of none other.

Q. These documents were all accessible to any gentleman that wanted to look at them, I suppose?

A. I don't know; I never went over them to investigate.

Q. Did you prior to the date of your receipt to the defendant for $15,000.00, paid for your interest in the inspector cases, ask him for any books or papers or for any information that would enable you to ascertain their then value, and he refused to give them to you?

A. I don't know, and I don't think that I ever asked him for any papers, except for his own information and his own knowledge as to how many claims there were and as to how much money was then due us as fees in the cases that had been allowed in 1886.

Q. My question was, Did you ever ask him prior to his purchase from you for any books or papers or any information which would enable you to ascertain their then value?

A. I never did, for I never conceived that there was any possible use in it, as he knew the standing.

Q. Consequently, then, he never refused to give you any books or papers. Am I right?

A. I think you are right.

Q. In your examination-in-chief you referred to a memoranda made by you and you say you have lost it.

A. Yes, sir.

Q. (Handing witness paper.) Is this a true copy of it, as far as you know, and are you willing that it shall be filed as an exhibit in your testimony?

An adjournment was here taken until Monday, June 6, 1892, at 3 o'clock p. m.

MONDAY, *June* 6, 1892, at 3 o'clock p. m.

Met pursuant to adjournment.
Present: Counsel for the respective parties.

Whereupon HORACE S. CUMMINGS, being recalled, was further interrogated.

By Mr. JOHNSTON:

Q. (The last question asked at the foregoing session was repeated to the witness by the examiner) wit (handing witness paper): "Is this a true copy of it, as far as u know, and are you willing that it shall be filed as an exhibit your testimony?" who made answer as follows:

A. I have examined it, and I cannot say whether it is a true copy or not, but in the main I should say that it was very near it. I am willing, as far as any material facts contained in it as to showing the relations between myself and Mr. Baker, or showing the state of my mind or understanding at the time are concerned, but I am not willing that it should be filed as a paper for reasons which I will give. First, that it is immaterial and irrelevant to any question that I have raised in this case. Second, that it is a breach of confidence on Mr. Baker's part, as it is a confidential memorandum made by myself in haste upon various slips of paper on the typewriter, in which there were erasures, interlineations, and additions and never revised by me, as I intended it only for my own use, and never seen by or read to any other person than Mr. Baker—entirely confidential and personal—the same as a talk would be between two persons. Mr. Baker asked the next day, I think, if he could make a copy of it. I said, "You certainly can, as I have nothing to conceal, but you must remember that this is between you and me." I never saw Mr. Baker's purported copy until shown last Wednesday. I see that it is in the handwriting of another person than Mr. Baker, showing that if this copy was made at that time he had since shown it to another person. I know afterwards, when Mr. Mackey, in a conversation with me, said that he had been talking with Baker and that Mr. Baker had shown him a copy of the paper that I had written and that I had allowed him to make a copy, I said, "Yes, I gave him permission to copy that paper;" and Mr. Mackey, as I understood him to say at the time,—that it was in Mr. Baker's own handwriting. This paper is perfectly well understood by Mr. Baker and myself. Any allusions as to the relations between him and myself I am perfectly willing and ready to admit. Any allusions to other persons, which have no relevancy to the case, I am not willing to admit, because they have no bearing on the case, and they would be apt to do injustice to

some persons named in them. Mr. Baker knows very well the circumstances and why I made the reference that I did.

Q. Mr. Cummings, then the only objection that you have to that paper is it makes reference to parties not connected with this suit; am I right?

A. I think you are, in the main, right.

Q. Now, can you recollect anything that was in the paper you wrote that does not appear in this paper handed to you?

A. It would be impossible for me to recollect things that I wrote not included in that paper, but there are things in that paper that I hardly think that I wrote.

Q. Are you willing to say that there are things in the paper that you have before you that were not in the paper written by you?

A. I am not willing to swear to that fact, although I believe——

Q. Give me the basis of your belief why there are things in this paper——

A. (Interrupting.) Because no such things were ever in my mind at any time.

Q. What things?

A. Certain references that he made.

Q. Please state what references are in that paper that was not in your mind at the time the original was written by you. More particularly, "As I had two long interviews with Judge Richardson on the matter and gave him the various reports and decisions on the matter by the solicitor and others and told him that in it was a matter of life or death with us, and that he must stand by us, and he said that he could make no promise, but he would look out for me. The case was successful." Do you desire that the court should understand you in your testimony as saying that what you have just read was not in the paper that you wrote?

A. Not all of it.

Q. What was not in that paper that you wrote that is in this, touching the interview with Judge Richardson?

A. I would say this, that I do not think that anything like this, viz., "and he said that he could make no promise, but he would look out for me"—that phrase was in it.

Q. You say you did not write that in the original?

A. I don't believe that I did.

Q. You are not willing to say you did or did not?

A. I can say as far as this, that I do not believe that I did.

Q. But you are not willing to say that you did not put it in your original, or that you did put it in your original?

A. Well, it is asking a great deal for a man to swear to something that he didn't do, but I can say that I do not believe that I did do it.

Q. You are willing to go no further than to say that you now believe that you didn't put the phrase that you have read in the original?

A. I will say that I do not believe that I ever wrote any such phrase.

Q. And that is as far as you are willing to swear on that subject?

A. I am not willing to swear any further than that, only to say that I do not believe that I ever wrote such a phrase as that, for the reason that no such thing was ever in my mind. I will explain the matter about Judge Richardson. When these claims were in the department and action was either refused or very slow and they were sent to Congress, and it was a question as to what Congress would do, Mr. Baker and I talked over the situation, I acting under Mr. Baker's advice, because he was the most conversant with the details of the cases, and it occurred to us that the cases might go to the Court of Claims, and, knowing that I was a friend of Judge Richardson, he asked me if I could not interview the Judge and get some idea of what the decisions and bearing of the Court of Claims were. Mr. Baker posted me; he gave me the decisions of the solicitor and all the other papers there were bearing on the case. I went to see Judge Richardson one day. I opened the Revised Statutes and I pointed out to him the new law and I showed him the old law. I then stated the case. He asked me, "Mr. Cumming-, is this case pending in the Court of Claims?" I said, "No, it is not, and I don't know as it will." The Judge and I then talked over the case and he gave me some references to cases not analogous to this, but as near as any of the decisions *as* the Court of Claims went on this subject, and the result was that his opinion seemed to be favorable. Afterwards I met the Judge on the street one day, as I went frequently up that way, and I said to him, "Judge, those cases have been referred to the Court of Claims." Says he, "What cases?" I said, "The inspector cases that I talked with you about." He said, "Have they?" He said, "Well, we will look after that." Then I said, in a laughing way, "Well, Judge, you have given a sort of an expression to me that you thought those cases are right; now I expect you to stand by us." It was the life or death of those cases.

Mr. JOHNSTON: So much of the answer of the witness that is not responsive to the question is objected to.

Q. Now, Mr. Cummings——

A. (Interrupting.) I will say that when the cases did come before the Court of Claims that it was considered and decided favorably, the decision being given by Judge Weldon.

Q. Mr. Cummings, is it not a fact, however, that what is written in that paper touching the conversation that you had with Judge Richardson did take place, did it not?

A. The conversation took place as I have related it.

Q. It was a fact, was it not, that it stated in this paper about the conference or interview you had with Judge Richardson?

A. It was a fact, just as far as I have stated it in my statement at this time and no further, and I will also say that I went and talked the matter over with Judge Richardson the other day.

Q. What did you talk it over with him for?

A. So to be sure.

Q. About what—whether you had put it in the original paper or left it out?

A. No.

Q. What was your purpose in asking Judge Richardson about it; to be sure of what?

A. To see if he could remember the conversation.

Q. Not the fact that you had put it in the original paper?

A. To get at the truth of it, whether it was in the paper.

Q. Why did you want to ascertain the truth of it from Judge Richardson?

A. The reason was this: I had a case pending in Congress in which the committee thought that we could go to the Court of Claims and I denied that the Court of Claims had jurisdiction. In order to make sure I went and stated the case to Judge Richardson and asked him if the Court of Claims did have jurisdiction, and he thought it over and he said, "No," and that conversation brought on this conversation.

Q. What other things are there in this paper that were not in the original paper?

A. I cannot state, but the tenor of the rest of the paper is according to my general recollection.

Q. Now, you say that that paper was to be a secret between you and the defendant, the same as any other partnership talk.

A. It was, most positively.

Q. Did it not contain expressions that Mr. Baker had overreached you or had attempted to cheat you, and if he did, why did you want to keep it secret, if you had in contemplation to institute the proceedings against him?

A. Because it was Mr. Baker's business and my business and nobody else's business.

Q. Now, did not your bill in this case contain similar expressions that are in that paper?

A. I cannot say.

Q. You have read the bill, I presume?

A. About two years ago.

Q. You read that paper a day or two ago?

A. I did.

Q. What was your purpose to keep it secret if Mr. Baker had defrauded you?

A. It was not a question of secrecy. It was just simply a question of my own business and his business.

Q. Now, tell us when you showed that paper to Mr. Baker after you had written it?

A. I should say somewhere about the first part of August, 1889.

Mr. JOHNSTON: I now offer that paper in evidence and ask to have it marked:

(Filed, marked "Exhibit H. M. B. No. 2.")

Mr. CLAUGHTON: The plaintiff objects to the admission of this paper in evidence as a whole. So far as his testimony tends to establish that, according to the best of witness's recollection, this is a copy of the original paper. He does not object to the introduction of the paper upon the ground that it is secondary evidence. With

this explanation, he objects to such portions of that paper as make reference to officers of the Government, which, in their nature, are private and confidential and to the introduction of which as testimony the witness himself has objected, because the paper was handed to the defendant for his private inspection, and the attempting to offer it is a breach of confidence. The plaintiff does object to those portions being read in evidence in this case upon the ground as stated.

Mr. JOHNSTON:

Q. You say in that paper that you tried to work up some outside business, but you didn't succeed. Please tell us what was the character of that business.

A. There were a good many schemes that were offered to me, but one business in particular. I wished to go into the business of collecting what was known as "postmasters' claims." I had a talk with Mr. Harvey Spalding, who had a large amount of them. I had gotten pretty well acquainted with the practice and details of the claims. I went so far as to get copies of all the papers. I wished Mr. Baker to go in with me, and he said he did not think it was exactly right to do, as it would be a cut into a brother attorney's business. I did not go into it.

Q. What was the class of business you meant when you used the term "work up some outside business"?

A. Certainly; that meant any kind of business other than the business we had.

Q. And you consulted with Mr. Baker upon the subject of doing it?

A. I did.

Q. What did he do?

A. He didn't think it was a good idea.

Q. And acting upon that, you didn't go into it?

A. I dropped it.

Q. Now, tell us, if you please, at what day you committed your thoughts to writing.

A. I will say, in the first place, that I made a memorandum on the typewriter, in a crude way, along from the first part of August, 1886——

Q. I am asking you, Mr. Cummings, when did you commit your thoughts to writing?

A. I will tell you how I came to do it. On the 6th of September, 1886, when Mr. Baker gave me his check for $15,000.00, he went away the same night on a little trip somewhere. The next day I was all alone. I took my memorandum of the days before and I simply enlarged upon it in a crude way, upon various slips of paper, for my own guidance after that, and I put it in my drawer, and it was either on the 6th or 7th of September that I wrote the memorandum.

Q. What led you to reduce in writing all your thoughts previous to this 6th of September, 1886?

A. Because it was a habit that I had, and I can produce a great many memorandums on different subjects and on different occasions.

Q. Did you anticipate previous to September 6, 1886, that Mr. Baker was overreaching you?

A. No, sir; I did not.

Q. Why did you make a memorandum anterior to that date and incorporate in it your thoughts?

A. I had been in the habit of doing that on a great many occasions, on different subjects and with different persons, and that's what gave rise to this, was the persistency that Mr. Baker indulged in in claiming that I had nothing to do with the cases, in the management of them, and practically that I knew nothing about them.

Q. Where is that original memorandum in which you wrote your thoughts?

A. I have it here. That was the basis of the original writing at the time and on the date that it purports.

Q. This seems to be only one sheet. Where is the rest?

A. That's all there is.

Q. When was this written?

A. On the dates which they purport to be written on.

Q. Mr. Cummings, why didn't you show that paper to Mr. Baker before 1889?

A. Simply because I could not tell whether there had been any misstatement or disception on his part until two years after.

Q. But you believed it on the very day that you made the sale to him?

A. I did not.

Q. Why did you wait a year after the two years that you said that it would enable you to tell whether he had misrepresented to you before you brought suit?

A. Simply because I had the right to do so.

Q. You say that on the 6th of August, 1886, the defendant handed you the paper wherein you sold to him the interest in the inspector cases for $15,000.00, and you signed it, and at the same time he handed you a check for $15,000.00, being the consideration therefor, and that on that night or the next morning the defendant left town for New Hampshire; that he also handed you the schedules and requested you to go on collecting the fees, and that he also left you his check book signed in blank; that the amount of claims that had been adjudicated and which were in the process of collection you discovered in a day or two after defendant had delivered you the schedules, which schedules contained the name, the amount, the fee, and all the data pertaining to each case, and that it was very hard for you to reconcile the amount of fees that the defendant said and the amount of fees that were in the schedules, and on that occasion you sat down and made a private memorandum for yourself, giving your impressions of the matter, wondering as to whether you had done the best or not, which you preserved for some time. Is the paper that I handed you and to which you have testified the same memorandum that you then wrote?

A. I presume the greater part of it is, but as to the same I cannot say.

Q. Were all of the papers and schedules you have testified to the same papers the defendant handed you before you signed the paper of September 6, 1886, which you took home to examine?

A. No, sir.

Q. What papers were there that he didn't hand you?

A. The only paper that he handed me when he went away was simply the statement of the allowances that were made under the appropriation of August, 1886, and no other papers.

Q. Were not the list of the cases and the fees received in 1886 among those papers?

A. They were; it was on the list.

Q. Was it the day after you sold your interest in the said cases and while you had the papers in your possession that you discovered that the defendant had overreached you?

A. I did not discover that the defendant had overreached me then.

Q. What was it that you discovered that caused you to reduce your thoughts to writing the day you did sell or the day after?

A. It was simply the fact that Mr. Baker had, by his importunity, forced me to make a sale, and those are simply my thoughts on the occasion. I had no reason to believe then that Mr. Baker had overreached me.

Q. When did you discover that Mr. Baker had overreached you?

A. In the summer or fall of 1888.

Q. What facts did you discover that the defendant had suppressed between the 6th of September, 1886, and the date of the paper filed as your thoughts that you didn't know before you sold out your interest in the cases to him that you didn't know at the time of sale?

A. When Mr. Baker bought the interest from me he said there was about $75,000.00 or possible $80,000.00 more of cases under the session of 1886 and 1887. No deficiency bill was passed; therefore nothing was done about those cases wherein I could discover anything in the session of 1886 and 1887. Congress on the first day of November, 1888, made an appropriation of $73,226.72 to pay these claims. It struck me then that Baker was pretty near right in his estimate of the cases, but on March 30, 1888, Congress made another appropriation of $62,661.37 to pay similar claims, and I will say that when these two appropriations were passed Mr. Baker asked me to help him and I did. He drew up the form of the letter transmitting the power of attorney to cash the draft and I filled out nearly every one of the powers of attorney that was sent out to collect those drafts, or at least a great many of them. He wrote the form of letter and I printed them all on a copy machine and did all the work that I could. During that time Mr. Baker was out of town at times. He went away on two occasions. I went on collecting some of them.

Q. You have testified to that before——

A. This was two years afterwards.

Q. Now, Mr. Cummings, will you be kind enough to answer my question?

A. I will say that on the 19th of October, 1888, Congress passed another appropriation of $110,666.64 to pay these claims, and that was the first that aroused my suspicions in the matter.

Q. Are you willing to swear that all those appropriations were made for all those claims or for claims that were in the hands of Mr. Baker at the time?

A. I don't know whether Mr. Baker controlled all the claims or not, but I know this, that he controlled nine-tenths of those claims.

Q. How long did you know that fact, that he controlled nine-tenths of them?

A. I have known it for years, because no one else had any of these claims. One or two attorneys undertook to collect them, but they didn't seem to make much headway.

Q. Tell us how you acquired that fact.

A. Simply because for years, when the appropriation bill had passed, I would help Mr. Baker fill out the powers of attorney and prepare the letters for transmission, and as I would fill up a power of attorney he would give me the list of names and the congressional document containing the allowance, and from that list of names and addresses that he gave me and the congressional documents I would make out the power of attorney and check them off.

Q. Did the papers you had in your hands show the amount of the claim and the amount of fee?

A. No, sir.

Q. What was that power of attorney for?

A. It was to indorse the draft to collect the money. It would be a power of attorney from blank to Henry M. Baker, of Washington, D. C., to indorse draft No. blank, issued on inspector warrant No. blank for the sum of blank, and to receive the same for me. I will say that when the appropriation was made for $110,000 and over on October 19, 1888, Mr. Baker was considerably worried as to whether he would get those drafts or not, because in the fall previous the Secretary of the Treasury had issued an order which forbade the giving of drafts to any one except the claimant, and Mr. Baker was anxious that those drafts should not be sent to the claimants. On his suggestion and at his wish, and positive wish, I went to see the ass't Secretary of the Treasury. I will say that this occurred in February and in March and in October, the time of the three great appropriations. I went to see the ass't Secretary of the Treasury and placed the matter before him. Before I went I said, "Mr. Baker, can you furnish me with a number of letters from our clients that we have received from them acknowledgeing the receipt of the money and thanking us for our services?" Mr. Baker did furnish me with quite a number of such letters. With these letters I went over to the ass't Secretary of the Treasury, and I stated to him that we had been for years collecting these claims; that no one had ever found any fault with us; that we had honestly and strictly accounted for every cent; that some of those claims and many of them had had prior allowances, and that if they undertook to send

the draft direct to the claimant, instead of through our hands, the question would immediately arise in their minds, "What is the matter with Cummings & Baker? Have they done anything wrong?" The ass't Secretary saw the force of that argument, and he said that it would raise a sort of suspicion, and as a result an arrangement was made by which the drafts came into our hands on the two first occasions—that is, the appropriation of February and the appropriation of March. In the appropriation of October—the ass't Secretary had gone away, as I discovered when I went over to the Treasury, and would not be back until after election. Mr. Baker wanted me to telegraph to him to have the same action taken on the October appropriation as had been taken on the two prior appropriations—that is, that the draft should be delivered to us—and there was an understanding that it should be so delivered, and they were so delivered to us. In one of the letters that passed between Mr. Baker and myself I mentioned the fact that I had rendered him valuable aid, as I believed, in getting possession of these drafts. He acknowledged the fact, and he said that he was willing to make me a fair and reasonable compensation for the amount of work done.

Q. Did your service go so far in that way as for you to name any price for your services?

A. I do not recollect, but I am inclined to think that, following out his admission that I was entitled to a compensation for the services that I had performed, and also the fact that before that one claimant, as it were, got away from him or tried to get away from him and get the draft himself, that Mr. Baker offered me $300 if I would secure that draft and not have it go to the claimant. I think I put a sort of an estimate on the value of those services, but what it is now I cannot say.

Q. What is your best judgment about it as to the price you named?

A. I cannot remember, because it was a percentage, and what that was I cannot say.

Q. Mr. Cummings, didn't these inspector cases grow out of the prior improper construction of sections 2733, 2738 of the Revised Statutes of the United States by the accounting officers of the Treasury Department?

A. They undoubtedly grew out of the neglect or the refusal of the Treasury Department to adjust the salaries of inspector- of customs according to the law as laid down in the Revised Statutes, the second section that you referred to. Whether it was the fault of the accounting officer- I don't know, but I never considered that it was their fault, but rather the direction of the Secretary's office.

Q. Now, after obtaining the powers of attorney from the clients and contracts for your fees, were not the other evidence gotten in this way: entirely from the printed reports of the Treasury Department, which showed the name, the address, and the amount of compensation received by every inspector of customs in the United States; also showing the time when they were appointed and the length of time that they were in service; that, then, being all the evidence in the case, all that was necessary to do was to ascertain,

by calculation, the sum due the claimants and present the statement to the department. Didn't that embrace all the evidence touching the inspector cases?

A. No, sir.

Q. What additional evidence did you have to furnish to satisfy the department that the claims were proper?

A. Because there were a great many cases, as those of night watchmen, deputy collector- of customs who were doing the duties of inspectors, and inspectors stationed on the Canadian border, of which there were very many who were paid only during the period of navigation, that it required on Mr. Baker's part a great deal of evidence other than that that could be gotten from the registers of the Treasury. I know that in case after case I have written for Mr. Baker affidavit after affidavit to be filed in the case by the claimant showing the time of his service and the place of it.

Q. Were there no record evidence in the Treasury Department showing the amount of services, the kind of service, and the names and pay that these persons received that you have just named?

A. That I don't know.

Q. I am speaking of the evidence so far as it is contained in the Treasury Registers.

A. There is nothing in the Treasury Registers to show, as far as I know.

Q. Well, in every case of every claimant filed in the department is not the claim accompanied by an affidavit of the claimant as to the facts of his case—as to what he claims?

A. I think in a great many cases where it was perfectly plain and clear that the letter filed by Mr. Baker, with the power of attorney attached, that would be filed with the first auditor and his clerk would immediately search the record to see when the man was appointed, where he served, see his rate of pay; then a statement would be made and that was sent to the collector of that port. He would make a report upon it, and on the report of the collector of customs and on the records of the department an allowance was made. I will say that some of these cases would have a bundle of papers which would contain all the way from 5, 10, and 15 papers and some of them were long documents, but the principle of the cases was the same all through, and I should say that by far the largest majority of the cases were cases that could be settled on the information that was right in the department, though of that Mr. Baker is more competent to speak than I am.

Q. Before the sale of September 6, 1886, didn't the defendant place in your hands for your examination the books containing all contracts and a list showing in what cases the fees were less than twenty-five per cent. of the amount secured, a list of all the cases allowed and not paid, a list of the pending cases, a list of the suspended cases, a partial list of the cases in which fees were to be divided with other attorneys, and a list of the cases which were not secured by any attorney and which might be secured by the defendant or others and the Treasury Department Registers for 1874, 1875, 1877, 1879, and 1883?

A. He never gave me any such papers as described there. This is the whole of them. He gave me the books containing the contracts, some Treasury Registers, a list of cases that he called "bad cases" or "suspended cases," and a list of cases that he tried to get but had not been successful in getting—that is, getting the powers of attorney—and also a list of cases where the fees were less than twenty-five per cent., and that was all.

Q. That is all he gave you?

A. I never saw a list of cases as pending in the department at the time when the sale was made until Mr. Baker showed them to me this afternoon.

Q. Did not the defendant propose, early in 1886, that the firm settle and close up the partnership, and that each take as his own all or unfinished business taken in since the 1st of January, 1885, and divide all fees in business taken in before that date as the fees should be collected, each to retain and manage the business then had in hand, and to this proposition you declined, but proposed to divide the business on the 1st of January, 1886, instead of 1885?

A. Mr. Baker, in January, 1886, began talking about those cases that he had done the most work in, and that he thought that he should have the most fee. He proposed then that he should have all the fees in the cases taken in since the 1st of January, 1885. I, of course, declined any such proposition, but I never knew or heard that he proposed a dissolution of the partnership at that time. After that—I should say some time in August, 1886—he still insisted on some sort of trade. I did make the proposition to him that I would take one-half of the fees in cases held by us prior to January, 1886, because it was in January, 1886, that he first made any complaint, or that I would give him two-thirds of all the fees in the inspector cases irrespective of when they were taken, or that I would take $15,000.00, as he thought it was the best for me.

Q. Was it not then, at that stage of the proceeding, th-t the defendant offered to purchase your interest in the inspector cases for $14,000.00?

A. He never offered to pay $14,000.00; he offered me $15,000.

Q. Mr. Cummings, what did you do with the check for $15,000, paid for the purchase of your interest in the said cases and handed to you by the defendant on the 6th of September, 1886?

A. I cancelled the check and put it in Mr. Baker's check book, and upon his saying, when he went away, that there was not probably money enough in Corson & McCortney's to meet it I issued three checks of $5,000 each.

Q. I hand you three checks, dated, respectively, the 7th, 15th, and 29th of September, and ask you in whose handwriting these checks are filled up in, and are they not the checks upon which you received the $15,000.00?

A. (Examining checks:) These are the checks; my own handwriting.

Mr. JOHNSTON: I now offer the checks in evidence and ask that they be marked.

(Filed, marked "Exhibit H. M. B. No. 3.")

Q. I hand you the receipt for the $15,000.00, the purchase-money, dated September 6, 1886, and ask you if this is your signature at the bottom of it.

A. This is the receipt that I gave to Mr. Baker on September 6, 1886; that is my signature.

Mr. JOHNSTON: I offer the same in evidence, to be marked its proper exhibit.

(Filed, marked "Exhibit H. M. B. No. 4.")

Q. Mr. Cummings, can you tell us how it is that with your suspicions aroused the same day or the very next day of the sale of September 6, 1886, that the defendant had overreached you or cheated you, that you didn't file your bill at once and not wait for a period of upwards of three years to elapse before you did bring the suit?

A. Because I had no suspicion that I had been overreached until the summer or fall of 1888, nearly two years after that.

EXHIBIT H. M. B. No. 3.

No. —. WASHINGTON, D. C., 9, 7, 1886.

Corson and Macartney, bankers,

Pay to the order of H. S. Cummings five thousand $\frac{00}{100}$ dollars.
$5,000. HENRY M. BAKER.

Endorsed: H. S. Cummings.

No. —. WASHINGTON, D. C., 9, 15, 1886.

Corson and Macartney, bankers.

Pay to the order of H. C. Cummings five thousand $\frac{00}{100}$ dollars.
$5,000. HENRY M. BAKER.

Endorsed: H. S. Cummings.

No. —. WASHINGTON, D. C., 9, 29, 1886.

Corson and Macartney, bankers,

Pay to the order of H. S. Cummings six thousand six hundred eighty $\frac{70}{100}$ dollars.
$6,680.70. HENRY M. BAKER.

Endorsed: H. S. Cummings.

Q. You found out enough in the fall of 1888, and not before, to satisfy you that you had been overreached?

A. I did, sir.

Q. How did you ascertain that fact?

A. When I found that $73,000.00, $61,000.00, and $110,000.00 were appropriated to pay the claims of inspectors of customs, and I

recognized in the congressional estimates that the very largest part, probably nine-tenths, of all the claims were claims that we were the attorneys in.

Q. Learning those facts through that channel and having those facts in your possession, why did you undertake to collect the draft for Mr. Baker for a compensation?

A. I never offered to do it for a compensation and never did do it for a compensation, and I never received any compensation.

Q. That may be, but I understood you to say that you had made an estimate—which you cannot now state—what your services were worth in obtaining these drafts for Mr. Baker by reason of a conference with the Assistant Secretary of the Treasury.

A. I will tell you. When Mr. Baker denied that I had done anything of any consequence in the collection of these claims I pointed to those three instances where I had helped to secure the drafts instead of having them go to the claimants, and Mr. Baker had prior to that presented a claim to me in which he claimed that I owed him $2,700,00, and, taking Mr. Baker, for argument sake, on his own ground, that I claimed that at a very moderate, almost infinitesimal persentage, that my services for collecting those drafts was far more than his claim against me.

Q. Then you proposed to settle it in that way?

A. I did not propose to settle it in that way.

Q. Mr. Cummings, what I want to know is this: Having your feelings aroused to the fact that you had been greatly injured—that you had been cheated by a partner in a business transaction, knowing that fact, yet, without adopting some process to correct that fraud, you nevertheless, at the instance of Mr. Baker and for his especial benefit, applied to the Assistant Secretary of the Treasury and performed certain services in obtaining those drafts for him for which you placed an estimated fee upon it?

A. I placed no estimated fee upon that service at the time it was done. The estimate that I placed on that service was nearly a year after that, and it arose out of a correspondence between Mr. Baker and myself. I had never any idea of charging Mr. Baker anything for my services for the first two lots—that is, the appropriation of February and of March, 1888.

Q. Then, with the full knowledge of the fraud practiced upon you in 1888, you waited a year longer with that information, and probably with additional information, without filing a bill to set aside the conveyance, but in the meantime set an estimate value upon your services for aiding Mr. Baker in obtaining the draft. How do you reconcile that?

A. I never set any value upon my services in the draft matter except as it was drawn out in correspondence between us.

Q. Then you did state a price; am I right?

A. I set an estimate as compared to what Mr. Baker said his claim was against me, but there is no estimate set by me in any shape, form, or manner in any way to indicate that I believed at any time that I had any interest in the cases that had been collected since 1886—that is, in fixing a fee for obtaining the drafts.

Q. Can you give a reason why you did not file this bill before the defendant brought his action against you at law?

A. Simply because I was not obliged to; simply because I hoped Mr. Baker would make some settlement; simply because I offered Mr. Baker to leave it to arbitration, and even said he might choose his own arbitrators.

Q. But he thought that there was nothing to arbitrate, didn't he?

A. I can't tell you what his thoughts were.

Q. What did he tell you?

A. He said, "No." I can tell you what he told a friend.

Q. Mr. Cummings, does it not appear to your mind very remarkable that the next day after the sale and you having in your possession all of the facts that you had when you filed your bill, that you should have permitted so long a time to have elapsed without bringing the suit?

A. I had no facts in my possession upon which to file a bill until two years after the sale.

Q. What facts did you have in your possession which warranted your feelings to be so aroused as you had to make a memorandum of it the same day of the sale or the next day?

A. The mere fact that Mr. Baker had undertaken to claim that I had practically no rights in the inspector cases; that I had done nothing in the inspector cases; that they were his own work and he should have all the compensation.

Q. But you knew that fact before you signed the receipt of September 6, 1886. If it existed then, why did you sign the paper?

A. As I have said, simply because of his importunities, and I was willing to make the sale on the representation and estimate that he had given me.

Q. Mr. Cummings, had you any facts in relation to the appropriation of 1886 in 1888 which you did not have in 1886? If so, state what.

A. I do not see what the question means.

Q. Did you have in 1886, relative to the appropriation of 1886, facts, and carried them along with you until 1888, and there gathered facts that you did not have in 1886 touching that appropriation of 1886?

A. In 1886 I knew of the fact of the appropriation; I knew the fact that the largest part of the appropriation came to Cummings & Baker as attorneys in 1888; I knew there were three appropriations made, and by assisting Mr. Baker in making out the powers of attorney to collect, and helping him write the letters and having them copied to put them in envelopes, and also collecting parts of the money when he was gone, I became aware of the fact that we still collected the largest part of the appropriation in 1888.

Q. My question, Mr. Cummings, does not refer to the appropriation of 1888, and I again take you back to the appropriation of 1886 and beg that you will answer that question. Do you understand the question?

A. I knew no more about the standing of the appropriations of 1886 for these cases and of the settlements thereunder for two years

after those settlements were made; in other words, I had no knowledge of the appropriation of 1886 until my suspicions were aroused in 1888. I supposed it was all fair and square.

Q. Now, Mr. Cummings, tell us, if you please, what you learned in 1888 touching the appropriation of 1886 that you did not know in 1886.

A. I don't know that I learned anything in 1888 of consequence about the appropriation of 1886, but it was only when the three appropriations, amounting to about $240,000.00, in 1888, instead of the $80,000.00, as was represented to me, that I began to inquire into the matter, and my knowledge of the appropriation of 1886 and of the fees thereunder was gained by taking the appropriation of 1886 and going into the first auditor's office and seeing what drafts were delivered to Mr. Baker or Cummings, or Cummings & Baker, under the appropriation of 1886. When I had gotten the list of those drafts I got the correct amount of them.

Q. When did you get the list of those drafts?

A. I think it was in the fall or winter of 1888 or 1889. I did not get a list; I made a list, and I went back to my office and I took the Treasury executive document containing the allowances of those cases and I estimated as far as I could, and I believe that I am correct that Mr. Baker received $135,000.00. on the claims of 1886.

Q. Mr. Cummings, will you be good enough to say that you knew nothing whatever about the appropriation of 1886 until 1888?

A. I don't remember now that I knew anything intervening between 1886 and 1888, though I may have done so, but I do not remember it.

Q. Now, you have testified in substance that: We were successful in the prosecution of these cases until about 1883, when Congress refused to make an appropriation, but instead made a contingent appropriation providing that at least two cases should be sent to the Court of Claims, and that the Court of Claims should pass thereon, and that if the Court of Claims passed favorably upon the claims, then the balance of the claims were to be paid, and they went there and were argued and decided in our favor. How did you learn the facts of which you have there testified, and when did you learn them?

A. I learned the fact from being the partner of a man who tried the cases and was interested to the extent to have a half interest in the cases.

Q. Did you take any part in the presentation or argument of the cases before the Court of Claims?

A. I did not.

Q. You say that there are a great many thousand dollars of these claims not collected.

A. That is my opinion.

Q. Can you give the name of a half a dozen of them?

A. I can't, because I have no means of knowing.

Q. It is a mere supposition or surmise?

A. It is a supposition on my part.

Q. You stated that it is deposited in Corson & McCartney's on

account of these claims $128,000.00. Tell us how you know that fact.

A. The time that I was depositing there, when Mr. Baker went away, in 1886, after he had given me his check for $15,000.00. I went on collecting, but I had the curiosity, either just before or just after Mr. Baker came back, to see how much had been deposited there, but the figure that I stated as $128,000 is my remembrance of it, not that I know it.

Q. Did you derive the information from McCortney or Corson?

A. I derived it from the bank.

Q. In whose name was the account kept?

A. The account was kept in the name of Henry M. Baker. We never had a joint account all the time that we were in business, but I will say this, that for years we paid these drafts through H. D. Cook & Co., and that before the account was kept in my name in Carson & McCartney's, and in 1886 the account was kept in Mr. Baker's name.

Q. Did you ever deposit any of that money, of the $128,000, after 1886 in Carson & McCartney's bank?

A. Oh, yes; because when Mr. Baker would be away—in 1888 he would be away a week or ten days at a time—and if any powers of attorney came in to indorse the draft I would take the power of attorney to the Treasury and have it certified and get the draft and have it stamped, and I would take the draft to Carson & McCartney's and deposit it.

Q. So you did deposit after 1886 moneys to the account of the defendant in Carson & McCartney's bank?

A. I did, as I recollect.

Q. In your examination-in-chief you say that when the claims were allowed you helped the defendant, aided him as much as usual—in fact, you gave as much aid or, perhaps, more, in collecting this lot of cases in January or February, 1888, as you ever had in collecting the other claims. Will you state specifically what you did and whether you did this at the request or Mr. Baker or not?

A. I certainly did do it at the request of Mr. Baker. To be a little more explicit, when the appropriation bill was passed and became a law Mr. Baker would prepare a list of the allowances and he would write a letter, and then we would have a large number of copies of those letters made. I would fill out the power of attorney and enclose it, and did all the clerical work, because there was nothing else to do. I did it just as much after 1886 as I did before.

Q Mr. Cummings, what did Mr. Baker do in connection with all of those cases?

A. Just the same as he always did. You must remember that we worked just as hard as we could upon those cases, because — was a matter of necessity or a matter of choice, at least, to get all these powers of attorney just as soon as we could.

Q. Will you please state the name of the cases in which you employed Mr. Lewis Abraham, of whom you have heretofore spoken,

in connection with the claim of David Heustis? What fee does your present contract with Mrs. Heustis provide for in that case?

A. The original fee was 30 per cent. or 33 per cent.; I will not be sure which. The case became complicated and Mr. Abraham, who was a patent lawyer and rather an expert in that line, thought he could do good work in it and wanted to come in, and I consulted Mr. Baker about it and he agreed with me, and he consulted Mr. Abraham, too. I wrote to the administratrix of the estate and I got a new power of attorney at 50 per cent., and I agreed with Mr. Abraham that the fee should be kept in three pieces. He took charge of carrying the case through and doing all the work and attending to it and to have one-third of the fee. I did that on the basis of getting a new contract.

Q. What fee did you promise Mr. Baker?

A. One-third.

Q. One-third of what?

A. Of the new fee.

Q. Of the fifty per cent.?

A. I suppose so.

Q. Mr. Cummings, are you now prepared to present the schedule of claims in your hands, filed during yonr partnership with the defendant, as called for in the first session of your cross-examination?

A. I have it at the office; I will file it next time.

An adjournment was here taken until Wednesday, June 8, 1892, at 3 o'clock p. m.

WEDNESDAY, *June* 8, 1892, at 3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel for the respective parties.

Whereupon HORACE S. CUMMINGS, being recalled, was further interrogated.

By Mr. JOHNSTON:

Q. Mr. Cummings, have you produced the list that we called for last session?

A. I have not. I have prepared a list of cases, but the list requested requires so much labor, wanting to know the situation, the condition, and the circumstances in each case, that I have not had time to prepare it, but I will furnish it during the examination with the understanding that I will be questioned in regard to any of them.

Q. State, if you please, when the copartnership between you and the defendant was dissolved.

A. I am unable to state.

Q. I would like to have the date if I can.

A. I cannot state the date.

Q. Have you any memorandum in your possession by which you could state the date of the dissolution of the copartnership?

A. I have no memorandum except the letters that passed between

Mr. Baker and myself. Mr. Baker, I presume, has those letters, but I kept no copy.

Q. But you know the fact that it has been dissolved?

A. I do.

Q. You have stated that you were a-mitted to practice before the Court of Claims; will you be kind enough to state upon whose motion you were admitted?

A. I was admitted by no man's motion. I had some cases that I filed in the Court of Claims. It was during vacation I filed cases. I can't say as to who was present, whether it was Mr. Hopkins or Mr. Randall. I wanted to make a call on the department at once. He told me to go to Judge Drake's house; he was then in the city, sitting in chambers. I went to his house on G street and told him the facts, and he said, "Well, I will grant your request," and a call was made, and I said to him, "I have not been admitted," and he said, "This will do as well." I have been acting upon that admission ever since and I have always been recognized.

Q. Will you tell us, if you please, the date of the assignment of Henry D. Cook & Co. to you as assignee?

A. I will not be sure, but I think it was about the 23rd day of October, 1884; that is my remembrance at this time; either the 23rd of September or the 24th of October, but I am inclined to think the 23rd of October.

Q. Now, you have testified relative to a debt that Mr. Hellen owed you by reason of a loan you made at the instance of Mr. Baker. Have you the Hellen note to which you referred in your testimony?

A. I have not.

Q. Do you know anything about where it is?

A. I think it is in the hands of the attorney to whom I delivered it.

Q. And that is the note for which Mr. Baker paid you one-half, with interest?

A. He did.

Q. You referred to a case in your testimony-in-chief that you call the "coal case" and the "St. Charles" and "Anglo-American" cases. Please state when each of those cases were paid and in whose name each was paid by the Treasury Department.

A. In regard to the names "Anglo-American" and "St. Charles" I wish to make a correction. It was the case of the steamer Baltic instead of the Anglo-American and St. Charles. The draft was to the order of S. and J. M. Flanagan, of Philadelphia; the draft in the coal case was to the order of Joshua Rhodes and Bagley, assignees in bankruptcy of the estate of Cosgrove and McClosky.

Q. State when they were paid, if you recollect.

A. I think they were paid in the month of April, 1877. I will say in regard to both of those cases that both had been prepared by me as far as they could be prepared. In the coal case I presented the papers, but I lacked one important paper which I had reason to believe was in existence. Mr. Browning, who was at one time Secretary of the Interior, had been the attorney in this case. He retired from business and the case finally came into the hands of

Charles Ewing as successor of the firm of Browning & Ewing. Knowing that they were the attorneys in the case, I thought probably they might have some old papers relating to the case. I went down to Mr. Ewing's office and made a search, and I found the papers there that I wanted. I went out to Pittsburgh and saw Mr. Rhodes and got from him an order upon Mr. Ewing to deliver to me or my order the papers in the coal case. I sent them to Mr. Baker with request that he go at once to Mr. Ewing's office and get these papers, as I knew that Mr. Baker was well acquainted with Mr. Ewing's clerk, who had charge of his business when he was absent, and Mr. Baker did go, and he obtained those papers, which were valuable in the gaining of the coal case. In regard to the Baltic case, I had practically won that case a long time before, but I was met with an objection of a question of title; so I had to delay the final settlement of the case and have a suit brought in the city of New Orleans to set the old title aside and to have a new title to the possession. That was done, and when I presented the evidence of that new title, with the decision of the court properly certified, the case was allowed.

Q. Mr. Cummings, referring again to the service you rendered Mr. Baker in obtaining the drafts of the Treasury Department in the inspector cases for him, do you recollect of making a claim for your services in obtaining those drafts for the sum of $3,000.00?

A. I never made any such claim, and I wish to state, in explanation of my answer, that Mr. Baker had presented a claim to me for $2,700.0- and I, in reply, referred to these services in obtaining the drafts, and my conclusion was that I did not owe him anything of the $2,700.00, because, making allowance even for obtaining these drafts, I am entitled to more than $2,700.00; but I made no claim for it.

Q. Do you recollect the amount of the drafts that you got through for him?

A. The favorable action that I asked for and which was granted by the Treasury Department covered drafts amounting, I should say, to about $240,000.00. I may be mistaken in the amount, because I don't know the amount of drafts that Mr. Baker received, but it covered whatever drafts there were in the three appropriations of 1888.

Q. You knew at that time the amount, didn't you?

A. I did not, and I do not know now.

Q. What did you ask the Secretary to do, then? How did you bring the matter before him?

A. I explained that more fully in my testimony of last Monday.

Q. Did you inform the Secretary as to the amount of the drafts that were to go through and the number of drafts that were to be paid?

A. I did not, because I did not know. I showed him the schedules as shown in the executive documents and told him that we controlled a large number of those cases, and I did not know how many drafts that Mr. Baker received.

Q. But what the amount of the drafts aggregated you knew, did you not, from papers you had in your hands then?

A. No, sir; I had nothing in my hands showing the amount of drafts in which Mr. Baker was interested. I had in my hands the documents showing the amounts of drafts covered by these appropriations, but how many Mr. Baker had I do not know.

Q. You did not care, either, did you?

A. I did not care.

Q. I believe you gave the date when you applied to the Secretary in the matter of the drafts, did you?

A. No; I did not, because I could not give it.

Q. Can you state the year or the month when you applied to the Secretary to have those drafts delivered to Mr. Baker?

A. I should say it was in March, in the first appropriation—March, 1888. In the second appropriation it was in April, and in the third appropriation it was in the latter part of October of 1888.

Q. Mr. Cummings, do you know the fact that the drafts were delivered to Mr. Baker?

A. I do.

Q. How were they delivered to Mr. Baker?

A. By Mr. Baker's presenting his power of attorney to the Treasury and taking the power of attorney and the draft thus delivered to him and presenting it to the First Comptroller, having the draft and the power of attorney compared and examined, and, if found correct, the order of payment to Mr. Baker is stamped upon the back of the draft.

Q. Well, after the drafts had been delivered to Mr. Baker and were honored by the Treasury Department, did you have any further talk with Mr. Baker upon the subject of those drafts?

A. Only as he would come into the office, and if he was pressed for time and was in a hurry to get them off that afternoon he would endorse the drafts and he would take them into Corson & McCartney's, as I supposed. He would deposit them there and then receive a draft from them for the amount of allowance minus his fee, and that draft he would bring back and enclose it in a letter to the claimant and with a request for the acknowledgement of the same.

Q. Mr. Cummings, in your settlement of your personal matters with Mr. Baker, did he not offer to allow you anything for your services rendered in assisting him in getting these drafts delivered to him?

A. Not at that time, but in correspondence afterwards, when, in speaking of what aid I had given in these cases, Mr. Baker did acknowledge these services, and he said that he was ready to make ample compensation for them, but he never named any sum.

Q. Did he say that he thought the sum of $500 would be ample compensation for the services rendered?

A. He might have done so; I do not know whether he did or not, but I think likely that he did.

At this point an adjournment was taken until Saturday, June 11th, at 3 o'clock p. m.

MONDAY, *June* 20, 1892, at 3 o'clock p. m.

Met pursuant to adjournment.
Present: Counsel for the respective parties.

Thereupon HORACE S. CUMMINGS, being recalled for further cross-examination, was examined and testified as follows:

By Mr. JOHNSTON:

Q. Mr. Cummings, have you found that list?
A. I have made a list.

(The witness, in answer to the call of the counsel for the defendant, produces the list of cases pending at the time of the dissolution of the partnership.)
Filed, marked "Exhibit H. M. B. No. 5."

Q. Mr. Cummings, will you be kind enough to state when your partnership began with the defendant?
A. I should say, in September, 1874. I will not be sure.
Q. Will you also state when it was dissolved?
A. I should say August, 1889, though I will not be sure.
The WITNESS: I wish to make a statement in regard to the paper introduced by the defendant, and to which we objected as having no material bearing upon the case and tending to divert the attention of the court from the real matter at issue, in this: I refer to the name of Mr. Mahon, who was the 1st auditor of the Treasury, and Colonel Reynolds, who was his successor. I never knew Mr. Mahon personally in my life. All that I knew of him up to that time was what Mr. Baker had told me. I knew that he and Mr. Baker were at odds; of the merits I do not know; that it resulted in non-action in these cases, and Mr. Baker was very anxious that there should be another auditor. I never knew Col. Reynolds until Mr. Baker introduced me to him as an old friend of his in our office, and after I had known him a short time Mr. Baker suggested that he would be a good man for auditor. Mr. Reynolds wanted an office, supposedly, because he became a candidate for the office of 1st auditor and the administration were inclined to appoint him, Mr. Reynolds being of the same politics as the administration. Mr. Mahon, who was always considered an honest and efficient officer, of course had his friends to protect him, and they brought out the ground that Mr. Mahon should not be displaced because he needed the salary to live upon, and I was asked by a prominent officer of the Government if that was true: I told him I did not know. He wished me to find out. I did make an inquiry of persons whom I believed knew Mr. Mahon's circumstances and I demonstrated to the gentleman wishing me to make the inquiry the fact that Mr. Mahon was independent in circumstances and was able to live without it, and upon that proof being made Mr. Reynolds was appointed as Mr. Mahon's successor. That is the meaning of my reference in the said paper.

In regard to Col. Reynolds, Mr. Baker and Mr. Reynolds did not get along well together in regard to these cases. Mr. Baker thought that Col. Reynolds did not push them up or was not as liberal or was not as active in the allowance of those cases as he should be, and one day I was told by a person in the department that Mr. Reynolds and Mr. Baker had had a falling out, and I asked him what it was about, and he said that Baker had been in and seen the auditor and given him a pretty rough talking to and Mr. Reynolds felt very bad about it. I met Col. Reynolds a day or two after that and Mr. Reynolds seemed distant, cold. Knowing that I had been on warm terms of friendship before, I could not understand it. I went and talked with Col. Reynolds in the office and he was considerably excited. He said that Mr. Baker had not treated him fair and had not talked to him as a person practicing before the department should, and he said, "I am very much inclined to report it to Secretary Folger," and I said, "Don't do it. I am interested in these cases and I don't want to be slaughtered because of another man's ill-judged action," and I gave him an invitation to my house to dinner and told him that I wanted to have a talk over this thing. He came up there and we went into the back parlor and we talked the matter over. I told him I thoroughly believed in these cases and I knew they were right, and the more they were investigated the more he would believe in them, and it was not right that he should allow these cases to suffer on account of his feelings towards any man, and the result was that he never made any report of the matter to the Secretary and he was on seemingly good terms. He was on very good terms with me. That is the explanation in regard to the reference to Col. Reynolds.

Mr. JOHNSTON: This voluntary statement of the witness is objected to, because it is immaterial, irrelevant, inadmissible, and hearsay and not drawn out by any question that I have asked him in this session or at the preceeding sessions.

HORACE S. CUMMINGS.

Subscribed and sworn to before me this 7th day of January, A. D. 1893.

J. ARTHUR LYNHAM, *Examiner.*

The complainant here rests his case.

(Endorsed:) Cummings *v.* Baker.

I certify that the foregoing deposition, comprising 99 typewritten pages, *were* taken down by me in shorthand, as an examiner in chancery, from the statement- when and as uttered by the deponent thereof; that the same was thereafter transcribed and reduced by me into print and thereupon read and subscribed by the deponent in my presence.

I further certify that my fee of $75 for taking, certifying, and returning said deposition has been paid to me by the complainant.

And I further certify that I am not of counsel nor in anywise interested in this case.

J. ARTHUR LYNHAM,
Examiner in Chancery.

EXHIBIT H. S. C. No. 1. Filed May 15, 1893.

Office of the Register of the Treasury.
Form 47.

Customs. B.

TREASURY DEPARTMENT.

To the Treasurer of the United States, Greeting:

Settlement warrant. D.

No. 573. D.

W.

$33,114.95

Pay to parties named on back of warrant, care com'r of customs, or order, to be charged to the appropriations named in the margin, thirty-three thousand one hundred fourteen dollars and ninety-five cents. Due ——, —— ——, collector &c., is to be charged, as per certificate of the commissioner of customs No. 95532, dated the 14th day of Aug., 1886. Recorded by the Register.

J. B. C.

For so doing this shall be your warrant.

Appropriations.

Prior to July 1, 1883.	Collecting revenue from customs.....	33,114 95
	Revenue-cutter service...	
	Marine hospital service...	
	Establishing life-saving stations.....	
	Life-saving service.....	
	Repayment to importers....	
	Excess of deposits	
	Salaries, shipping service..	
	Services to American vessels (customs).....	

Treasurer's Office,
Aug. 21, 1886.
Division of accounts.
C. M.

Given under my hand and the seal of the Treasury Department this 20 day of August, in the year of our Lord one thousand eight hundred and eighty-six, and of Independence the one hundred and eleventh.

[SEAL.]

W. F. McL. THOMPSON,
Assistant Secretary.

A. W.

Countersigned: 21.
M. J. DURHAM,
First Comptroller,
By J. R. GARRISON,
Deputy First Comptroller.

Registered:
21. ROS. A. FISH,
Act'g Register.

23.

OFFICE OF THE TREASURER OF THE UNITED STATES.

Received for this warrant the following p. draft-:
No. —. All on New York.
No. —. on
No. —. on 8-27
H. A. LOCKWOOD,
D'y Com.

Endorsed:

Customs warrant No. 573.

Pay to 5081 Virgil A. Crawford $1,521.38.

Draft on customs. Warrant No. 573, p't.

No. 5081. TREASURY OF THE UNITED STATES,
Pr. C. M. WASHINGTON, D. C., *August* 23, 1886.

Pay to the order of Virgil A. Crawford fifteen hundred twenty-one $\frac{38}{100}$ dollars.
$1,521.38.

J. W. WHELPLEY,
Ass't Treasurer of the United States.

{ Paid Sep. 2, 1886, New York. }

To the ass't treasurer U. S., New York, N. Y.
Register's office, form No. 234. Ed. 4, 24, '91—500.

Endorsed:

Payable to authority on file.

HENRY M. BAKER, *Attorney.*
J. R. GARRISON,
Dep'y First Comptroller.
HENRY M. BAKER, *Att'y.*

Pay to the order of Moore & Schley for account of Corson & Macartney, Washington, D. C.

CORSON & MACARTNEY.

For deposit in Fourth Nat'l bank for account of Moore & Schley.

MOORE & SCHLEY.
C. H. PATTERSON.
A. C. C.

EXHIBIT H. S. C. No. 2.

Filed May 15, 1893.

Henry M. Baker, attorney and counsellor at law, No. 1411 F street N. W.

WASHINGTON, D. C., *January 4th*, 1886.

Hon. J. Q. Chenowith, first auditor.

SIR: I have the honor in behalf of D. K. Zoltman, whose power of attorney to me is on file in the department, to make application for the arrears of salary due him under secs. 2733 and 2738 of the Revised Statutes for his services as an inspector of customs in the district of Vermont from August 1, 1875, to the end of his service.

I am, very respectfully, your obedient servant,

HENRY M. BAKER, *Att'y.*

This claim was allowed by commissioner of customs on the 13th day of February, 1888.

Certified also on Oct. 1.

Endorsed: 96703. Vermont. V. T. D. K. Zoltman. $162.00.

Date of allowance.	Name of claimant.	Date of letters.	Amount endorsed.
Feb. 13, 1888	D. K. Zottman.....	Jan. 4, 1886	162 00
" " "	W. H. Rand.....	Aug. 28, 1885	1,233 00
" " "	G. D. Sowles.....	Oct. 3, 1885	549 66
" " "	N. H. Brown.....	Sept. 7, 1885	3,252 56
" " "	S. H. Wood.....	Aug. 31, 1885	165 00
" " "	S. Story.....	Nov. 18, 1885	420 00
" " "	L. L. Penniman.....	Aug. 28, 1885	501 00
" " "	Calice Limoge.....	Dec. 21, 1885	1,569 37
" " "	H. H. Rounds.....	Nov. 28, 1885	969 00
" " "	H. H. Dean.....	Jan. 5, 1886	2,328 83
" " "	C. O. Churchill.....	June 9, 1886	1,522 94
" " "	A. A. Reed.....	Jan. 4, 1886	120 00
Feb. 13, 1888	J. L. Schuyler.....	Mar. 29, 1883	652 25
" " "	J. W. Glennie.....	Nov. 2, 1882	421 78
" " "	Ezra Hazen.....	——— —, 1885	2,191 50
" " "	H. E. Bedell.....	Sept. 16, 1885	547 84
" " "	H. T. Benedict.....	Nov. 21, 1885	202 50
" " "	Chas. Wells.....	Aug. 28, 1885	84 00
" " "	Geo. F. West.....	Nov. 28, 1885	186 00
" " "	J. H. Brocks.....	Nov. 18, 1885	649 07
" " "	Jno. F. Bain.....	Aug. 28, 1885	106 07
" " "	Cassius M. Booth.....	Nov. 19, 1885	417 00
" " "	J. S. Spaulding.....	Oct. 5, 1885	609 00
" " "	C. E. La Duke.....	Dec. 18, 1885	477 00
" " "	Amanda F. Palmer..	Sept. 28, 1885	191 00
" " "	Geo. W. Brush.....	Dec. 10, 1885	202 50
" " "	C. D. Staples.....	Aug. 28, 1885	183 00
Feb. 13, 1888	G. L. Ewins.....	Dec. 12, 1885	2,562 34
" " "	F. M. Holden.....	Feb. 17, 1885	800 25
" " "	Richard O'Neil.....	Jan. 4, 1886	57 00
Dec. 11, 1886	W. H. Tefft.....	Mar. 11, 1885	1,355 50
" " "	P. H. Raiford.....	Sept. 16, 1885	439 20
" " "	W. H. Coe.....	April 13, 1885	462 82
" " "	W. E. Keeler.....	March 11, 1885	2,108 45
" " "	Andrew Green.....	Feb. 17, 1885	239 25
" " "	Thomas H. Starr....	March 29, 1886	648 90
" " "	Matthew Hooper....	June 11, 1883	621 30
" " "	John A. McKay.....	Oct. 12, 1882	609 24
" " "	F. E. Whitesell.....	Feb. 17, 1885	1,427 50
" " "	Catherine Sweeny...	Oct. 12, 1882	2,099 00
" 21, "	F. H. Koch.....	Mar. 29, 1883	343 33
" " "	Otis Little.....	Oct. 9, 1882	762 75
" " "	James Paine, Jr.....	Mar. 29, 1883	2,079 52
" " "	Chas. H. Cay.....	April 14, 1885	1,082 05
Feb. 13, 1888	D. J. Follett.....	Sept. 5, 1885	933 33

Date of allowance.	Name of claimant.	Date of letters.	Amount endorsed.
Feb. 13, 1888	W. H. Gibbs.....	Mar. 11, 1885	1,295 32
" " "	A. B. Holmes.....	Feb. 17, 1885	509 96
" " "	Chas. S. Bunker.....	June 12, 1883	990 32
" " "	N. S. Smith.....	Feb. 17, 1885	4,125 70
" " "	J. T. W. Curtis.....	—— —, 1885	886 00
" 14, "	Josiah R. Brooks....	Feb. 17, 1885	369 60
" " "	Peter C. Bird.....	Feb. 17, 1885	660 10
" " "	M. A. Powers.....	Mar. 19, 1885	843 10
" " "	O. W. Robinson.....	Feb. 17, 1885	122 00
" " "	Will. H. Salis.....	April 18, 1885	86 70
Feb. 14, 1888	Albert Ellsworth....	Sept. 21, 1880	382 84
" " "	J. R. Bradford.....	Mar. 29, 1883	290 70
" " "	William Lowen.....	Feb. 17, 1885	4,316 68
" " "	E. S. Harris.....	Feb. 17, 1885	3,738 82
" " "	B. P. Adams.....	April 20, 1885	72 82
" " "	W. R. Durfee.....	May 26, 1885	1,867 87
" " "	C. M. Bentley.....	Feb. 17, 1885	479 35
" " "	James S. Moffatt.....	May 26, 1885	1,453 10
" " "	A. C. Haywood.. ...	Feb. 17, 1885	2,082 61
Ap'l 10, "	J. W. Haynes.....	Jan. 5, 1886	207 00
" " "	Geo. W. Davis.....	Jan. 18, 1886	1,723 41
" " "	Robert Hancock.....	Sept. 10, 1885	333 04
" " "	S. E. Blood.....	Dec. 24, 1885	1,723 41
" 7, "	J. M. Johnson.....	Feb. 26, 1886	1,094 04
" " "	J. H. Hamlin.....	Mar. 29, 1883	532 04
" " "	L. Van Boskerch....	Mar. 11, 1885	1,335 00
" " "	J. P. Thomas.....	May 26, 1885	1,324 50
" " "	B. F. Kelley.....	Feb. 10, 1886	192 00
" " "	H. H. Adams.....	Jan. 18, 1886	531 00
" 9, "	D. K. Huntington...	Feb. 17, 1885	1,904 03
" " "	Chas. B. Tyler.....	Mar. 11, 1885	2,623 50
" " "	Geo. S. Haskins.....	Feb. 17, 1885	3,902 92
" " "	Geo. J. Kerbs.....	Feb. 17, 1885	940 32
" " "	H. M. Clemons.....	Feb. 17, 1885	3,490 57
" " "	J. W. Sylvester.....	Feb. 17, 1885	3,625 07
" " "	William Baird.....	Feb. 17, 1885	3,097 39
" " "	B. W. Jenks.....	Feb. 17, 1885	2,501 50
" " "	Alexander Ferguson.	Nov. 2, 1882	2,382 51
Apr. 9, 1888	Geo. H. Gregory.....	Feb. 17, 1885	2,525 50
" " "	Jno W. Glennie.....	Feb. 17, 1885	2,030 33
" " "	C. S. Nims.....	Nov. 2, 1882	3,238 34
" " "	Geo. S. Lester.....	Nov. 11, 1885	990 33
" " "	C. A. Blood.....	Feb. 17, 1885	2,110 90
" " "	B. C. Hurd.....	Oct. —, ——	246 00
" " "	F. C. Blood.....	Oct. 17, 1885	1,244 37

Date of allowance.	Name of claimant.	Date of letters.	Amount endorsed.
Apr. 9, 1888	J. J. Potter.	Feb. 17, 1885	1,636 50
" " "	Nathaniel Robinson..	Nov. 11, 1885	1,095 85
Oct. 23, 1888	James A. Crozer.....	May 26, 1885	286 20
" " "	Geo. M. Sackrider....	Mar. 16, 1885	582 49
" " "	Chas. E. Aiken.....	May 26, 1885	994 94
" " "	Frank D. Clark.....	Mar. 20, 1885	916 48
" " "	J. Fleisheim.....	Sept. 11, 1885	367 94
Oct. 23, 1888	R. H. Brelsford.....	Mar. 11, 1885	1,719 64
" " "	J. Q. Barnand.....	Feb. 17, 1885	2,259 21
" " "	S. W. Hall.....	Oct. 10, 1882	1,443 74
" " "	Joseph Taber.....	Nov. 10, 1882	2,608 58
" " "	J. H. Holmes.....	Oct. 10, 1882	2,126 20
April 11, "	Hiram Brown.....	Feb. 17, 1885	2,479 64
Oct. 23, "	Geo. F. Sisson.....	Oct. 10, 1882	3,329 02
" " "	Levi B. Downs.....	Oct. 11, 1882	497 90
" 25, "	H. W. Bertle.....	May 5, 1885	1,554 05
" " "	John D. Thompson...	Oct. 5, 1882	312 96
" " "	John S. Drew.....	Oct. 10, 1882	4,456 89
" " "	E. J. De Medicis.....	Jan. 5, 1886	2,605 73
" " "	W. J. Alden.....	Oct. 10, 1882	4,148 52
" " "	G. E. Scofield.....	Feb. 23, 1885	4,071 47
Oct. 25, 1888	Stephen Holmes.....	Oct. 10, 1882	1,289 13
" " "	Gould D. Jennings...	Aug. 19, 1886	5,663 68
" " "	John X. Miller.....	Oct. 11, 1882	1,567 50
" " "	B. F. Miller.....	Oct. 11, 1882	1,147 50
" " "	C. S. Peale.....	Oct. 12, 1882	2,392 50
" " "	C. B. McLellan.....	Sept. 24, 1885	450 27
" " "	W. H. Atkins.....	Sept. 16, 1885	1,881 14
" " "	J. Barthalow.....	Oct. 7, 1885	400 70
" " "	H. A. Ashmore.....	Feb. 17, 1885	122 00
" 30, "	David S. Beetle.....	Dec. 1, 1879	3,696 53
" " "	S. H. Calligan.....	Oct. 9, 1882	4,461 00
" " "	Thomas Hurst.....	Oct. 5, 1882	2,127 00
" " "	Edward Ashman....	Sept. —, 1885	1,220 00
" " "	Lucius Gilbert.....	Oct. 12, 1882	5,854 73
" " "	Thomas Coe..... ...	Oct. 12, 1882	549 00
" " "	Grant Smith.....	Oct. 12, 1882	5,720 89
" " "	S. P. Bartlett.....	Mar. 29, 1883	951 26
" " "	A. P. Tilton.....	Mar. 27, 1885	912 13
" " "	Benj. Predmore.....	Oct. 11, 1882	1,015 32
" " "	S. C. Johnson.....	....	3,547 05
March 12, 1889	J. T. W. Custis.....	Feb. 17, 1885	3,252 25
" " "	Lorenzo Ricord.....	Sept. 28, 1885	1,411 76
" " "	Peter Lander.... ...	Aug. 7, 1885	711 00
" " "	Allen S. Fleury.....	Oct. 1, 1885	1,002 55

Date of allowance.	Name of claimant.	Date of letters.	Amount endorsed.
April 11, 1888	Geo. T. Arnold.....	Mar. 25, 1885	2,585 45
" " "	Charles Delamere....	May 5, 1885	1,498 67
" " "	E. H. Green.....	Mar. 16, 1885	2,561 70
" " "	A. J. Kidd.....	Mar. 11, 1865	2,256 30
" " "	L. H. Hartwick... .	Feb. 17, 1865	783 38
April 11, 1888	Will. H. Tuller.....	Mar. 12, 1885	2,301 09
" " "	G. W. McBride.....	Dec. 3, 1885	1,079 23
" " "	A. J. Butler.....	Feb. 17, 1885	3,250 15
" " "	C. W. Appleby.. ...	Feb. 17, 1885	1,398 12
" " "	M. Z. Lampman.....	Feb. 17, 1885	2,810 76
" " "	E. W. Fisk..	Apr. 13, 1885	1,919 43
" " "	J. P. Reig.....	Mar. 11, 1885	1,912 47
" " "	M. L. Rice.....	Jan. 23, 1886	645 69

EXHIBIT H. M. B. No. 1.

Filed May 15, 1893.

Personal.

SIR: In reply to your inquiry I make you the following statement as to the standing of the affairs of the late firm of H. D. Cooke & Co.:

When the said firm failed, on October 23, 1884, their books showed their standing towards the general creditors to be as follows:

Secured debts (debts to banks and individuals secured by collateral).....	$68,070 00
Preferred debts (certain creditors legally preferred by the deed of assignment).....	29,592 57
General debts (having no preference or security).....	123,876 88
Total.....	$221,539 45

The above shows that the amount of indebtedness to be provided for was then $153,469.45, that being the amount above the secured debts.

An examination of the books showed that the *assest* were composed of overdrawn book accounts, overdue notes and certificates, and other evidences of various investments in various companies, &c., which have proven to be of but little value and can be utilized by skil-ful management. These and an uncertain interest in a scheme known as the Florida Coast Line Canal and Transportation Co., which stood on the books as costing $37,881.61, constituted the assets.

Mr. Campbell, a partner who lived in the West and in no way blamable for the management and losses of the firm, at once directed me to use an investment that he had made from his own private funds and not an asset of the firm in the purchase of the Washington, Ohio & Western railroad in Virginia, in paying of the debts of H. D. Cooke & Co. for which he might be liable.

My duty under the assignment was to dispose of the assets as soon as practicable, but an immediate disposition of them would have been ruinous and would have yielded but a very small percentage of the amount due the creditors.

The canal scheme would have been practically suspended when the firm failed if the pay-rolls of that Co. had been allowed to remain unpaid and active work been stopped, and that asset would have been lost. In this state of affairs I assumed the responsibility and personal liability of advancing the security for the payment of the expenses of the work on the canal from Oct., 1884, to April, 1885, till a new arrangement could be made, and save this asset from a total loss and the charter from forfeiture. The result proved that I was right in taking this liability of more than $18,000 upon myself, for today this asset is worth more than ever, I having $45,000 of their 1st-mortgage bonds and $84,000 of stock in my hands as assignee, an interest greater than before held by the firm. The securities advanced by me have been returned, so that the creditors of H. D. Cooke & Co. reap the benefit of the liability I assumed wit-out loss or expense to themselves.

When the W., O. & W. R. R. was purchased from the commissioners appointed by the court in Virginia by the syndicate, of which Mr. Cooke was one, acting for the interest of Mr. Campbell, for the sum of nearly $5,000,000, the same was payable in instalments, and the last instalment was not due till the 1st of Feb'y, 1885, some three months after the failure. Notice was duly served upon me that unless this payment was made on or before the said first day of February that they would enter unto possession of the road and leave the purchasers to their remedy in the courts to determine what rights they had, if any, after their neglect to pay as agreed.

This meant, in my opinion, a total loss of the $59,500 already invested by Mr. Campbell, and it became my duty to save this interest for the creditors.

I was obliged to raise the sum of $45,000 in order to meet the demands of the courts in Virginia. The railroad allowed me the use of their notes and a portion of their securities, and after much trouble a loan of $35,000 was secured from Wells, Fargo & Co. and $10,000 from the Franklin Bank of Baltimore on the notes of the railroad Co., pledging the entire interest at stake as collateral to the loan.

By a subsequent arrangement with Wells, Fargo & Co. they released $39,000 of the bonds, which I now hold, and when the notes are paid by the R. R. Co. a further amount will be surrendered to me. It must be remembered that this valuable railroad interest was in no sense an asset of H. D. Cooke & Co., but had been thus

secured for the benefit of the creditors without cost or expense to themselves.

While these negotiations were pending a suit was brought against the members of the syndicate in the courts of New York which ties up these securities till the termination of the suit, which will undoubtedly be in favor of the company.

In meantime sums small in amount have been collected upon different accounts and applied to the liquidation of the liabilities, and various items not deemed worth scheduling have been traded off for debts against the firm.

The standing today is as follows:

Secured claims	$20,485 00
Preferred claims	10,628 30
General claims	89,372 81
Total	$120,487 11

This shows a total reduction of the total indebtedness of the firm of $101,052.34 and of the unsecured indebtedness of $53,467.34, and the estate is worth more today than at date of failure.

This reduction has been brought about by the most rigid economy, by avoidance of all litigation, by cutting down every useless expense, by performing an immense amount of legal work myself, which naturally would have been given to some attorney at a large fee, by advancing my own travelling expenses on all occasions, and practicing economy in every case.

I have paid myself as yet no portion of the fees provided in the deed of assignment and have received no payment for my personal expenses except paper and postage.

The unsecured debts of H. D. Cooke & Co. have been reduced more than one-third without touching a material or valuable asset, and the estate is worth more today by a considerable amount than when the failure occurred.

It must follow that as the debts are reduced without materially diminishing the value of the assets that the amount to be devoted to the liquidation of the balance of the debts will be proportionally increased, and if I am allowed to pursue the same course for the next year that I have in the past, I have no great doubt but that I can show an equally large reduction of the liabilities; but any attempt to force any immediate sale of the assets would prove disastrous to the interest of the creditors.

I have given an option to sell the canal interest for a good sum, more than it cost, and hope that it will be accepted, and there is a strong probability that the railroad interest will be disposed of in like manner. If these two assests can be realized upon I believe they will be under good management; the debts of the firm will be privided for.

My wish and aim is to make a settlement that will be satisfactory to every creditor and honorable to the firm of H. D. Cook- & Co., and to this end the work of myself and the firm has been devoted with great success thus far, and if I am permitted to conduct the

matter in the future as I have done in the past I believe that the creditors will be satisfied with the result and leave the firm with a clean balance-sheet towards its general creditors.

A full examination of the accounts, receipts, expenditures, and doings of the assignee is solicited at the hands of any party interested.

Thanking you for your good will, I am yours respectfully,

HORACE S. CUMMINGS,
Assignee of H. D. Cooke & Co.

Washington, D. C., Jan. 12, 1886.

EXHIBIT H. M. B. No. 2.

Filed May 15, 1893.

SEPT. 7TH, 1886.

Thoughts in Mind for the Past Few Days.

In 18-3 resigned from the Treasury and tried my luck at law business.

Within two months lost about all I had saved and never recovered 1,000 for the $8,000; did well the first year.

The next year Baker left Treasury and wanted to try his hand at law. He came into same office with me. We put up a partnership sign, issued partnership cards and letter-heads, but no partnership existed in fact, except in special cases. Baker proposed general partnership, but, as I had worked up quite a lot of cases which had only to be decided, I could not see the justice of such a division.

In 1875 Baker still proposed a complete partnership, but I could not see justice of same under the circumstances, as I had considerable business and he had none.

I would say that in the latter part of 1874, after the Revised Statutes came out, in examining the same we discovered the section relating to pay of inspectors and we had a good deal of talk about it and we agreed to keep very quiet about — till time enough had elapsed to make the amount due inspectors enough to pay the trouble to prosecute. When that time came I went to Conant's house and brought up the subject and he seemed surprised that we had discovered it, but said that he was glad that I was to have it if any one was to have the collecting of the same. The result was that the next morning I was at Conant's room and he took me into Bristow's room and we discussed the whole subject, and Bristow said that he had no doubt that the amounts would *be* ultimately have to be paid, and said, "If it is to be paid, I am glad, Mr. Cummings, you have found it out, that you will make what there is to be made." The first allowances that were made were paid and the cases were all right till Mahon, the first auditor, out of some spite to Baker, whom he disliked personally, sat down upon the same.

I asked Conant about it and he said he had a talk with Mahon

about it, and he said Mahon was very bitter against Baker, and he said he did not see what he could do about it.

I should have said that in winter of 1875–'6, in response to Baker's repeated requests, I consented to make a full partnership of all business. This was not my asking or seeking, but it was entirely because he used to say that we ought to divide even, &c.; that we should take our chances together, &c.

To return to our inspector cases, the whole business—and I will say that Baker never had any cases of any account but these inspector cases—came to a standstill and there was no remedy but to get rid of Mahon. I think I was mainly instrumental in getting him dismissed, as I got up the data and saw McCreary, gave him the points—in fact, did all the work—and I think it was through me—of us two—that Reynolds was made auditor. Then Baker got out with Reynolds, and it became my duty to be general pacificator, and to that end I used to invite him and his family to my house and feed, &c., them, to get on his good side, if he had any, and in this way I got many an action favorable which we would not have had otherwise.

In point of money, I think I brought the most in till 1881, and then we both had a setback. Congress would not appropriate for either of our cases. I had many large and good cases, but it was no use to get more adjudications when we could get no appropriations for what I had had decided. I took a hand in outside business with the idea that I might work up something that would give us employment outside of Government business, but it did not work. In 1884 Congress made no appropriation for our cases and I tried hard to get mine referred to Court of Claims, but Randall refused, saying the cases wer- good ones and that the court would agree with us. Baker had his referred, as Randall did not believe they would get through. In 1884 Cooke failed, owing me a large amount. To protect myself I took the estate to do the best I could. I did not neglect any business in any degree, but Baker, having won his test case in the Court of Claims, and I think I did a good deal to aid it, as I had two long interviews with Richardson on the matter and gave him the various reports and decisions on the matter by the solicitor and others and told him in it was a matter of life or death with us, and that he must stand by us, and he said that he could make no promises, but he would look out for me, the case was successful.

Then Baker began to hint that he was doing the most of the work. He would complain that I would not take in pension cases, &c., when I had always told him I did not want such work, and that he could take all the cases of that kind and keep all the fees therefrom.

In the beginning of 1886, this year he would ask*ed* me how much I would take for my share of the inspector cases and would say that he — done most of the work on them and should have the fees.

Baker never said anything about the matter till it looked that my insurance and lost-time cases would be a failure. It was in January that he first made such a proposition, and I made no

reply. In August he brought it up again and insisted on his having the greater part of the fees.

Baker in August proposed that we divide all fees on cases taken by us prior to Jan., 1885, and after that date he should have all the fees, and I gave him no reply.

Again, same month, proposed it, and I told him that I recognize that he has — more manual work for the firm in the last 18 months than I have, but that it was because I had already allowances for *for* — than $25,000 fees and have cases, $50,000 new ones, taken by me since Jan. 1, 1885, and my cases, if allowed, will give me more than $50,000 fees, but that it *is* no use in having cases adjudicated then.

Baker has worked well, but it has been on one class of work—that is, writing to the inspectors the same sort of letter. He has their address-, and the whole business could be done by a woman in five days in a month at ten dollars a month; but no, he must do all this writing himself, and I do not call it work, but simply wasting time that he could employ better.

In my cases I do not know where the parties live or did live or who the real parties are in many cases.

August 19th, 1886.—Baker again pushed the matter and said he would give me $15,000 for my portion of the fees in the inspector cases.

I say I do not believe in any such thing and say that I do not know *what* powers we have or what percentage we have, what have been allowed or what will be allowed in future, and he said that "There are the powers; pick them out." I try it, but could make no headway, as he had control of the matters himself and I have been kept in ignorance of their condition. He always keeps the powers or contracts locked up; keeps all data of what has been paid locked up.

He says that a large percentage has to be paid to other attorneys, and in many cases the fees are 10, 15, 20 per cent., when I had supposed that nearly all were to pay 25 per cent. I ask- him specifically what he estimates the fees will be, and he has distinctly said that he did not think the fees in the cases allowed would be more than $20,000, and he says that there will not be allowed hereafter more than $75,000 at the most.

August 26.—Baker still persistent. Money is not everything. I do not wrong Baker or any other man. I do not want trouble with him; life *to* to- short to make it a money-grabbing game, and to please him I do or have made up my mind to what I consider an unjust thing to myself, but if he can afford to do wrong I can afford to suffer.

I tell him, relying on his statements as to the amount of fees that will come out of the cases just paid by last Congress—that is, he said the fees were not over $20,000, and that not more than $75,000 will be allowed hereafter—that I will do one of three things: I will take $15,000 for my interest, or I will take ½ fees in all cases held by us prior to Jan., 1886, or that I will take ⅓ fees in all cases, inspectors', and I depend on his doing what he thinks is best for me

and my interest, as he knows about the situation of the cases and their prospects.

Sept. 7th, 1886.—Baker gave me his check for $15,000, saying that was best for my interest, and I depend on his honesty as to representations. This settlement, on his statements, will give $15,000 out of the $20,000 fees on present settlements, leaving him only $5,000 out of this batch; but as he says that the future payments will be about $75,000, on which he will get, calling the settlements $80,000, $20,000 of fees, that will give him $25,000 to my $15,000, or $10,000 more than mine, and that is fair, looking at the matter from his point of view. Wonder how it will come out.

What have I done wrong? Baker complains. I did do one wrong thing, and that was when I did not go into the post-office cases, and I wanted to and talked with Baker about it, but he said we had better not; that we had a good thing in the inspector cases and better not cut into Spaulding's business. We would not like it if any one of our friends did so by ours, so I dropped it, and now Baker has dropped me out.

Is it right? But what is the use of fighting?

Baker partnership was of his seeking; not *mine* wish.

I have never asked his aid, borrowed one dollar, asked his name or endorsement or his help in any way, shape, or manner. I have been careful not to do so. On the other hand, I have loaned him thousands of dollars, raised thousands of dollars for him, gotten his paper cashed, &c.

Not told any one. He has never lost one dollar by me while — or by *nay* friend of mine or by one that I introduced to him. I have lost thousands by those that he has introduced to me, depending on the character he has given them.

Suppose my cases had gone through and his had been stopped, as may have been, would he have been as anxious to do this unjust act?

If the allowed and paid cases give more than, say, $25,000 fees in place of his stated $20,000, he has simply deceived me. If future allowances *pre* more than $100,000, he certainly mistakes knowingly.

I won't condemn too hastily.

September 7th, 1886.

I, C. L. Leas, being duly sworn, do depose and say that I made the foregoing copy from a typewritten paper brought me for that purpose by Henry M. Baker; that it is a full and literal copy thereof and of the whole of it; that I personally compared the copy with the said original, and that it is a true copy thereof; and further deponent saith not.

C. L. LEAS.

Subscribed and sworn before me this 10th day of February, 1890.

WM. K. ELLIS,
Notary Public.

I, Henry M. Baker, being duly sworn, do depose and say that the within copy, written on seven sheets of paper, is a true and full copy of an original paper handed me about the first day of August, 1889, by Horace S. Cummings, who then and there said to me that he wrote it at the time and on the date it bears; that said copy was made with the consent of the said Cummings; and further deponent saith not.

HENRY M. BAKER.

Subscribed and sworn before me this 10th day of February, 1890.

WM. K. ELLIS,
Notary Public.

EXHIBIT H. M. B. No. 4.

Filed May 15, 1893.

H. S. Cummings. Henry M. Baker.

Cummings & Baker, attorneys and counsellors at law; practice in the U. S. courts and before Congress and the executive departments; offices, 1411 F street N. W.

WASHINGTON, D. C., *Sept. 6th*, 1886.

Received of Henry M. Baker fifteen thousand ($15,000) dollars, in full for all my interest in and right to fees in the so-called inspector cases. This includes all cases in which the fees have not been divided and settled, except one draft to the order of John C. Long and one to the order of James Mitchell, both dated in 1875, whether paid or unpaid, filed, or outstanding.

H. S. CUMMINGS.

Testimony and Exhibits for Complainant.

Filed May 15, 1893.

EXHIBIT H. S. C. No. 6.

Horace S. Cummings, councellor-at-law, Washington, D. C., No. 1416 F street N. W.

OCTOBER 2ND, 1889.

Mr. Baker:

As I said, I am willing to have a full and free talk of our matter at any time you may designate, with the understanding that the whole matter is discussed, which you have heretofore avoided, and that I can have the papers of our trade of 1886, the payments made and fees collected by you in that year, for those papers are as much my property as yours.

I ask you also to state what you deem a reasonable fee for my services in the power-of-attorney matter. My estimate is one per cent. on the claims, which is more than reasonable when your fee or the main fee was 25 per cent. of the face of the claims, and I estimate that you collected some $280,000 in 1886.

I propose that our discussion be in the presence of some third

party, who is a friend of both of us, and I would suggest Frank Mackey, as I believe he would do what is right; but it is of no use for us to talk if we are to split on the point which I say and insist is vital to both our rights.

I cannot see that I am indebted to you in anything, but, on the other hand, I claim that you are largely indebted to me, especially in the trade of 1886.

Do you not think it would be better to have some friend, as I suggest, present to hear both our stories on the conditions stated above?

Yours truly, H. S. CUMMINGS.

P. S.—I was intending to come over and see you yesterday, but your letter shows an animus and a feeling that it makes me think it would be useless for us to talk except in the presence of some third person, for we should be as far apart as when we started.

H. S. C.

EXHIBIT H. S. C. No. 5.

Horace S. Cummings, counsellor-at-law, Washington, D. C., No. 1416 F street N. W.

OCTOBER 4TH, 1886.

H. M. Baker, Esq.

DEAR SIR: As you say that you will not discuss the matter of payments of 1886 and refuse to exhibit the statement of fees collected that year, the very statement on which our trade was based, and as you refuse to set any amount of compensation due me for services rendered at your solicitation in getting the drafts in 1886, though you offered $300 to get the possession in a single one of the cases, I see no way but for you to begin your suit in court. I am sure I have no objections if you have not.

If the trade of 1886 was binding and valid, then I am entitled to a fee of at least one per cent. on the claims for services in the power-of-attorney case. If the trade was not binding, then ½ of the entire fees are mine.

I have tried to act square to you in my first offer, but as you did not accept it I withdraw all offers.

I shall be ready to accept service at any time, but had rather you would begin the fight.

Yours truly, H. S. CUMMINGS.

Irrespective of any matters prior to Sept., 1886, I cannot see where I owe you a dollar; in other words, even on your own claim of a valid trade of '86, I think the balance is in my favor since then; but that the court can decide.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } Equity. No. 12263.

Be it remembered that at an examination begun and held, pursuant to notice, on the 8th day of March, 1893, at which said examination there were present Franklin H. Mackey and H. O. Claughton, Esqrs., solicitors for complainant, and J. J. Johnson, Esq., solicitor for defendant, personally appeared before me, J. Arthur Lynham, an examiner in chancery of said court, the within-named witness, who, being called in his own behalf and being first duly sworn according to law to tell the truth, the whole truth, and nothing but the truth touching the matter at issue in the above-entitled cause, did depose and say what is hereinafter set out as stated by him.

MARCH 8TH, 1893, at 12 o'clock *p.* m.

Met pursuant to notice.

Present: Franklin H. Mackey and H. O. Claughton, Esqrs., solicitors for complainant, and J. J. Johnson, Esq., solicitor for defendant.

Whereupon HORACE S. CUMMINGS, the complainant, having been heretofore duly sworn, was recalled and interrogated as follows:

Direct examination.

By Mr. MACKEY:

Q. Mr. Cummings, there has been filed here by Mr. Baker a letter of yours dated October 5, 1889. Did you write that letter to Mr. Baker (handing witness letter)?

A. I have no doubt that I did.

Q. What have you to say about it?

Mr. JOHNSON: The question is objected to as immaterial, inadmissible, and irrelevant.

A. This letter is one of three letters that I wrote to Mr. Baker about the same time, and in regard to a full explanation of this letter I had my attorney call on Mr. Baker to file the other two letters as being explanatory of this letter, which he has now done, and I will simply say this in regard to this letter: There are two points: first, in regard——

Mr. CLAUGHTON: You need not say that; that will do.

Mr. JOHNSON: This is objected to; the explanation of the letters is inadmissible; the letters speak for themselves.

(NOTE.)—The two letters are here given in evidence by Mr. Mackey and filed by the examiner, marked "Exhibits H. S. C. Nos. 5 & 6" respectively.

Cross-examination.

By Mr. JOHNSON:

Q. Mr. Cummings, are those the only letters that you ever wrote to Mr. Baker, which you have testified to?

A. No; I presume not.

HORACE S. CUMMINGS.

Subscribed and sworn to before me this 11th day of March, A. D. 1893.

J. ARTHUR LYNHAM,
Examiner in Chancery.

The taking of testimony on the part of the complainant is here announced as finally closed.

I certify that the foregoing deposition (comprising two typewritten pages) *were* taken down by me in short-hand as an examiner in chancery from the statement when and as uttered by the deponent thereof; that the same was thereafter transcribed and reduced by me into print and thereupon read and subscribed by the deponent in my presence.

I further certify that my fee of $5.00 for taking, certifying, and returning said deposition has been paid to me by the complainant.

And I further certify that I am not of counsel nor in anywise interested in this case.

J. ARTHUR LYNHAM,
Examiner in Chancery.

Testimony on Behalf of Defendant.

Filed Apr. 6, 1893.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } In Equity. No. 12263.

WASHINGTON, D. C., *Dec.* 12, 1892—3 o'clock p. m.

Met pursuant to notice.

Present on behalf of the complainant, Mr. Mackey and Mr. Claughton; present on behalf of the defendant, Mr. Johnson.

Whereupon HENRY M. BAKER, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined by Mr. JOHNSON:

Q. You are the defendant in this case, I believe?

A. I am.

Q. What is your profession?

A. I am a lawyer.

Q. State in what courts of the District of Columbia you are admitted to practice.

A. I was admitted to practice in the supreme court of the District of Columbia on the 14th of June, 1866; in the Court of Claims of the United States on the 14th of December, 1876; in the United States Supreme Court on the 16th of October, 1882, and am also admitted to practice in the various local government courts and commissions.

Q. The plaintiff states in his bill that he has been for more than fifteen years engaged in the general practice of his profession as an attorney in the various courts of the District of Columbia. What do you know about that, of your own knowledge?

A. So far as my own knowledge extends, he is not a member of the bar of any court in the District of Columbia.

Q. Were you ever a partner with the complainant in this case? If so, state the circumstances attending the formation of the partnership and when the said partnership began.

A. I resigned from the Treasury Department on the 17th of June, 1874, with the intention of opening a law office in this District. I had had some talk with a friend of mine, who was a member of the bar of the District, about forming a partnership with him. One day, at the general post-office, which was then on F street, I met the complainant. He said he had heard that I had resigned and was going to open a law office. I told him that was true. He then asked various questions about what practice I proposed to secure, if possible, and finally ended by himself proposing that I should enter into a partnership with him. We talked it over on several occasions and finally the arrangement was completed.

Q. State what business that partnership covered.

A. It covered all manner of demands or claims against the Government which we might see fit to take.

Q. Was there any subsequent modification of that agreement of partnership?

A. I should have said that at the time of that agreement——

Mr. CLAUGHTON: Was this agreement in writing or verbal?

A. It was a verbal agreement. I should have said that at the time of that agreement Mr. Cummings excepted such cases as he had then filed and which he called completed or nearly so—where the evidence was all in. That was the only exception to a full partnership at that time. We opened our office at No. 1411 F street N. W. in September, 1874. There was no further modification of that agreement until September 6, 1886.

Q. When did the parnership end?

A. It ended in August, 1889.

Q. Had the complainant anything at all to do with your resignation from the department and your going into the practice of law?

A. Nothing whatever.

Q. Did the complainant at the time he was negotiating with you in regard to a partnership represent himself as a member of the bar of the Court of Claims?

A. He did.

Q. Did you so believe?

A. I did so believe then.

Q. What did he say to you about his business in that court?

A. He represented that he had had several cases there which he had conducted to a successful termination, and that he had made a good deal of money out of them, and that he was in the way to get a great many more cases.

Q. Did the complainant ever practice before the Court of Claims or any other court while your partnership continued?

A. He did not.

Q. State, if you please, whether or not at any time during the existence of the copartnership you urged him to attend to business before the court; and did you offer, for that purpose, to move his admission to the courts where you had business?

A. I frequently did so. I offered to move his admission to the bar of the supreme court of the District of Columbia, to the bar of the Court of the Commissioners of Alabama Claims, and to the Supreme Court of the United States, but he declined to be admitted to either of the courts.

Q. The complainant in his bill avers that he faithfully performed all his duties as a partner. State, if you please, what you have to say in respect to that.

A. For the first half dozen years of the partnership the complainant was reasonably attentive to his duties, but after that he seemed to lose his interest in the firm and devoted very little of his time to its affairs. He neglected to perform his share or anything like his share of the duties. Whenever I would ask him to do anything he would either say that he could not or, if he concluded that he could, he would neglect to do it. He very seldom ever carried anything through to a conclusion or did the specific work which I asked him to do. He did not work one-tenth part of his time, in any form, shape, or manner, in the office or in connection with any business pertaining to the office or to the firm.

Q. What can you say in regard to the cases you had before the French and American Claims Commission, as to any duties that were performed by the complainant?

A. There was no particular case to which I might refer before that court. The petition was prepared by an attorney in New Orleans, from whom we received the case, and the testimony was taken. According to the practice before that court, the verbal arguments were delivered by the counsel for the respective nations, but the claimant's counsel could prepare briefs—first, a general brief, which was responded to by counsel for the government against which the claim was brought, and then the claimant's counsel had a right to reply by brief. These briefs were to be approved by counsel of the government of which the claimant was a citizen. I prepared the first brief, and after a lapse of considerable time the United States replied by brief. I went away on business and asked the complainant to prepare the brief in reply, but not to file it until my return, stating that it would be necessary to have that brief ready about the time of my return. When I returned I asked him for the brief, and I found only half a dozen scraps of paper, which had

no semblance to a brief. I asked him why the brief was not prepared and he said, Well, I don't know what to do with it; I looked it over somewhat, but I don't know what to say. I then commenced the preparation of the brief myself, and asked him to procure some information for me from the Congressional Library. He went away one day and pretended to have made an examination in the library, and told me there was nothing on the subject in the library. It was merely a geographical question—as to in what province or department a given town was located. I doubted the accuracy of his information, and the next day I went to the Congressional Library myself and asked Mr. Spofford if there *there* was not a gazetteer of France there which would give such information. He said certainly there was, and immediately sent for the book. In fifteen minutes I had the information which I had asked the complainant to procure. I then completed the brief. That is all the service he rendered in the cese, and that was a fair sample of his service in others.

Q. State anything touching the cases in the Court of Commissioners of Alabama Claims.

A. In that court we filed quite a number of cases. I was very busy at the time the court was organized, and suggested to the complainant that we ought to procure a great many cases in that court, and that it would be well for him to go up to New England, especially in Maine, and see if he could not gather in a lot of those cases. I had a volume, which had been previously published by the Department of State, giving the names of those who had filed their claims in that department, and I suggested to him that he should take that volume along and make that search. He said he did not think it would be of any use. I urged him, from time to time, to do so, but found that he would not go. I then urged that he would write letters, and he did write letters. I believe that he succeeded in obtaining one case, which was of no value, as it did not come within the terms of the statute. He did not even prepare the petition in that in any form in which it could properly be filed before the court. I had to rewrite that, and it was executed. After the cases were filed, some fifty in number, I urged him to be admitted to the bar of that court, especially saying to him that I wished him to take the testimony in some of these cases. He declined to be admitted to the bar of the court, and said that he did not want to go traveling around taking testimony. I replied that it was necessary that it should be done, and he seemed to have leisure to do so. I was busy in very many ways, and it was necessary that he should take this testimony; but he never was admitted to the bar of the court and never took one particle of testimony in the cases and, of course, never argued any of the cases, but he received one-half of the fees resulting from them.

Q. Something has been said in the testimony-in-chief relative to the Beebe or Little Rock case. Please state what that is.

A. That was a case relating to the title of considerable of the territory upon which the city of Little Rock now stands, and was for quite a time pending before the Land Office. While in that office

the complainant attended particularly to it. Then, the Supreme Court having decided that a patent once having been issued it would be impossible for the Land Office to issue a second patent or part with the title which the Government had already disposed of, an attempt was made to procure authority from the Attorney General to bring suit in the name of the United States to set aside the patent issued, which, after months of endeavor, was obtained. Suit was brought at Little Rock, and was managed by a local attorney there until it came to the Supreme Court of the United States on appeal. In the meanwhile several preliminary briefs had been prepared, much of the work upon which had been done by the complainant. When the time for the hearing in the Supreme Court came I suggested to the complainant that, as he has managed the case, he must look after it before that court. He said he did not want to. I said, I have other business and you have followed the case and you must do it. He tried to get some outside people to take that case upon a contingent fee and they declined. I then urged him to go up with me and be admitted to the bar of the Supreme Court of the United States and argue that case. He declined to do it. In order to save the case, if possible, and at last to save the reputation of the firm, I hastily reviewed the briefs which had been written before and prepared myself as best I could and argued the case before the Supreme Court. The court decided to dismiss the case upon the ground that it was old and stale. Having thus refused to take any part in its argument or in its conduct, the complainant in his testimony sees fit to suggest that the case ought not to have been lost.

Q. State, if you please, what you know with regard to the commissions due to the collectors of customs for light-houses disbursements, &c.

A. It had been the custom of the Government, under statute, to pay to collectors of customs two and a half per cent. commissions upon their disbursements for light-house purposes. Several years ago Congress neglected to make an appropriation for that purpose, and the accounting officers of the Treasury in their settlement of the collectors' accounts credited them with the amount conditionally—that is, they made when they settled the account an estimate of what would be allowed to them in case there was any money to pay it. A report of the commissioner of customs, approved by the Secretary of the Treasury, was transmitted by the Secretary to Congress, recommending an appropriation for that payment. Congress failed to make the appropriation, but a paper setting forth the amount due to the several collectors was printed and thus became public property. I procured a copy of it and suggested to the complainant that he endeavor to gather in as many of these cases as he possibly could. I pointed out to him the circumstances connected with them and what it would be necessary to do. I suggested to him that he should write to each one of them. There were some thirty or more of them. One day he wrote to five, I think, and stopped there. The next day he paid no attention to the list, and on the next day I suggested to him that I thought it

would be a good plan to go through with the list. He said he had written to five of them and guessed he would wait until he could see what he heard from them. Meanwhile other attorneys were endeavoring to gather in the cases and were gathering them in. I found that he was not going to do anything in the matter and I took up the entire list and wrote to each one of them, enclosing a power of attorney, &c. I collected quite a number of the cases, but upon his letters not a single case was procured. The fees derived from that service were divided with the complainant, that being a fair sample of hundreds of other instances.

Q. Did he in any of the cases look up precedents that would govern those cases or any of them? And, if so, state what he did and what his work amounted to.

A. In some instances I asked him to look up decisions and precedents, and in a few instances he pretended to do so. I was one day using one of these decisions when it occurred to me that I would like to read the whole case. I went to the volume and found that where he had attempted to or pretended to give the exact words used by the court in rendering the decision no such language was to be found in the decision rendered, and that in fact neither the syllabus of the case nor the case itself justified what he had given me as the language of the court. I of course was somewhat indignant, and when he came into the office again I spoke to him about it. He said, Well, that's what they meant to say. Of course, I could not use any of his work without verifying it, and a great deal of it I found could not be used at all.

Mr. CLAUGHTON: Do I understand that the memorandum Mr. Cummings gave you was in writing?

The WITNESS: It was.

Q. Where is that writing?

A. Those notes have been long since destroyed.

Mr. CLAUGHTON: May I ask counsel for the defendant what is the object of this examination?

Mr. JOHNSON: I expect to show all the way through that Mr. Cummings has absolutely done nothing in the firm business.

Mr. CLAUGHTON: The complainant objects to the further taking of testimony in this line, as it is altogether irrelevant to the matters at issue in this suit and is a mere waste of time.

By Mr. JOHNSON:

Q. What can you say now touching the cases called the inspector cases, mentioned in this suit? Please give a detailed statement and history of the cases.

A. The so-called inspector cases arose under sections 2733 and 2738 of the United States Revised Statutes. Those statutes prescribed for inspectors, and those who performed the duties of inspectors, a salary of $3 per day. Prior to the enactment of that statute inspectors had been paid generally less compensation, another section permitting the Secretary of the Treasury to pay even $4 a day. When these sections became law the Treasury Department continued

to pay the inspectors at the old rate rather than the statutory rate. Having discovered that, I called the attention of the complainant to it on one day, and his reply was: That cannot be. I assured him that it was, and explained the matter to him. I showed him the statute and all the other matters connected with it. In due course of time I began to gather cases to secure the difference between the amount already paid and the legal salary of these inspectors, which was done in the firm name of Cummings & Baker. After a sufficient number of them had been secured I filed them in the Treasury Department, asking for a settlement of the cases. They were opposed, and it was a year or so before any of them were settled. When the Treasury Department found that the cases were being brought up, instead of attempting to secure a modification of the statute by Congress, they attempted, by various departmental orders, to outwit the law. For instance, there were many officers whose official designation was deputy collector and inspector. In those cases the Government discharged the man as inspector and reappointed him as deputy collector, requiring him to do the full duty of both offices. Those who had been inspectors for service at night were discharged as inspectors and reappointed as night watchmen. Those who were retained under the designation of inspector were limited in amount of pay by commissions giving them $3 per day, not to exceed in the aggregate, for instance, $600 per annum. These and other devices were used by the Government. The statute had been in force about one year when these and other orders were issued by the department. My first effort was to get the Government to settle these cases for the one year, which, after a reference to the solicitor and argument before him, the accounting officers were ordered to settle. Before them I had hearings on almost every case. After that the other branches were taken up one by one and were argued, some in one place and some in another, according to the order in which they were heard. In these several cases I made arguments before the Secretary of the Treasury, the solicitor of the Treasury, the Attorney General, the Court of Claims, and almost daily before the first auditor of the Treasury and the commissioner of customs. These cases, while very simple, so far as the mere statement of the law is concerned, were complicated as to facts, no two cases being exactly alike. These variances, brought about by orders of the department, made their settlement quite difficult and required very many arguments and much time and labor.

Q. Did the complainant have any knowledge of these cases or claims prior to your calling his attention to them?

A. Not any.

Q. State, if you please, whether or not the complainant understood these cases at all.

A. He undoubtedly understood the general character of the cases. He understood how to calculate, in a general way, the amount due any individual claimant, and generally, in a rough kind of way, their theory and import, but he took no part in their discussion or

in preparing any briefs or argument connected with them and did very little of the clerical work in connection with them.

Q. You may now state, if you please, how you came to buy the complainant's interest in these so-called inspector cases, and in so doing you may state the preliminaries to the trade and how it was completed.

A. As I have stated, after about 1880 the complainant became very neglectful of his duties as a partner, and from time to time I urged him to his duty. I finally expressed to him that I was dissatisfied, and I wished to discontinue the partnership. He objected very strongly and promised to do better in the regards which I pointed out to him. His amendment was only temporary and partial. So it went on from time to time. In 1883 I again called his attention to it, and again said to him that I was dissatisfied and would like to close the partnership. He again appealed to me to let it go on, and I finally consented. In 1886 I told him that the matter had become intolerable and there must be a change; that I was tired of doing all the work and dividing the money with him. We had a great many talks over the matter, and I suggested to him that I thought we had better separate, and that I was perfectly willing to do so, he taking the cases he had as his own after the first day of January, 1885, and I doing the same. He objected to that. I said in 1885 because in the fall of 1884 he had become the assignee of Henry D. Cook & Company, and from that time on had devoted very little time to the firm affairs. I told him that something must be done, and that I would not go on in the way in which things were going. He finally suggested to me that he would consent to it if I made the time 1886. I said that would not be fair. He then suggested that in these inspector cases he would be willing to take one-third of the fees instead of one-half, as had been heretofore divided with him. I suggested to him that perhaps a better way would be for me to buy him out. He entertained that proposition, and, after further talk, gathered together all of the agreements that we had, a list of the cases pending in the departments, a list of the cases which had been suspended or disallowed by the departments, a list of the cases in which our fees were by contract other than 25 %, a partial list of the cases in which the fees were divided with other attorneys, the Treasury Registers for several years, and House Executive Documents No. 70 and No. 225 of the 49th Congress, and handed them to him. He tied them up and took them away with him. I have no doubt he took them to his home. He kept them for some two or three weeks. I asked him, from time to time, how he was getting along, and he said he was doing something with them. That was his general answer. One day I came into the office and found the bundle containing the several documents and papers I have enumerated on my desk. He was out. I untied the bundle and put the several papers and documents in their usual places. After awhile he came in, and I said, Well, Cummings, what conclusion did you come to? He said, I don't know much about it, but if you insist upon it I guess we can trade. I wish to say here that at the time he took these papers I

made him a distinct offer of $14,000 for his interest in the cases, including the cases which were then in process of settlement. Those were all the cases which were reported to Congress for appropriation in House Executive Document- No. 70 and No. 225, before mentioned. Those documents had been in the possession of the firm for weeks. Mr. Cummings had had them, and I had seen him figuring in connection with them at his desk. I have here those documents. I am not positive and cannot swear that these are the identical ones which Mr. Cummings had at that time, but I am confident they are such, for the reason that the- contain certain marks which indicated just what he wished to know about them, namely, which of these cases were ours, and which of them had a less fee than the general fee of 25 %. These documents, No. 70 and 225 of the 49th Congress, I file as exhibits in this case.

(The above-mentioned documents are filed herewith and marked Exhibit H. B. M. No. 1 and Exhibit H. M. B. No. 2.)

These documents show exactly the amount which had been allowed on each of the claims, and by adding them up and taking out the cases where the fee was other than 25 per cent. and multiplying the remainder by 25 and by adding the fees in the cases not at twenty-five per cent. would give the gross fees in these cases. I have no doubt that the complainant did so. That would show that the gross fees resulting from these cases was over $30,000. In his bill of complaint, especially in items 6, 7, and 8, he states that I informed him there were only $20,000 of these fees, which statement is not true. The next day after he brought these papers in our talk was resumed. He came in in the morning and said to me, Well, Baker, if you insist upon something being done and if you think it best for me, I will take $15,000. I said, Mr. Cummings, I think that is more than I ought to pay, but you must decide whether it is best for you or not. I have no advice to give in this matter. This is a trade. He said, Well, give me a check. I gave him a check and took his receipt, which is already filed in the case. The next day, which was the 7th day of September, 1886, I left the city, and was gone until the first day of October of the same year. These cases were then in process of payment, and I left with him a schedule upon which was entered the names of several claimants, the allowance made to each, the fee to be received from each, remittance to be sent to him and a blank to fill in the date of such remittance, the amount of each check sent, the number of the check, and the date of the check, which paper remained in the possession of the complainant from September 7th until October 1st. If I had told him there were only $20,000 in fees in these cases all that he would have had to do to have proved that I had misstated the case would be to have added up six columns of figures, of letter-page size, as shown in the exhibits. I have no doubt he did so add them up, as his testimony indicates. If so, he must have known before my return, if his testimony is true, just exactly what he claims he did not know. I left with him also, when I went away, my bank book and book of checks on the bank, drawn to his order

and then signed, without date and without amount. The purpose of that was because there were some twenty cases unpaid, and, as I was going to be gone some three weeks, it was probable that, the powers of attorney being out to these parties, the cases would be returned for settlement during my absence. The drafts, of course, under the powers of attorney, would be made payable to my order, and he could not endorse for me, as they were drawn to me individually. They would have to be sent to me for endorsement before they could be turned into money, and it was the custom of the firm to remit the amounts due the clients immediately upon the receipt of the money. Therefore I left him my checks, with which he drew funds to remit to the parties as soon as he came into possession of the drafts. These sheets show that during my absence the complainant settled thirteen cases, which are shown upon these sheets in his handwriting and marked on the right-hand side with a blue pencil. These were the cases: Lawrence P. Remur, $63; J. A. Riopelle, $5,452.36; Frank Hesse, $732.03; Joseph H. Riggs, $53; R. A. Bensell, $344; Stephen Sharpe, $1,560.04; James E. Waugh, $680.89; Edwin B. Low, $47.70; Samuel Comer, $877.70; Joseph Hardy, $703.10; S. D. Mix, $1,462.20; Cornelius Bosworth, $1,723.41, and Homer W. Stryron, $4,276.64, aggregating $17,976.50, upon which fees were collected to the amount of $4,494.15. The first of these collections appears to have been made upon the 9th day of September, and the last upon the 29th day of September, 1886. There was also a seventh page of these sheets, which showed the amounts paid or to be paid other attorneys for services in these cases. These several seven sheets I file as exhibits in this case.

(The above-mentioned papers are filed herewith and marked Exhibit H. M. B. No. 3.)

The WITNESS: From that time I conducted the inspector cases solely on my own account and solely by my own endeavors. The complainant never subsequently to that collected any of the inspector cases or deposited any funds to my credit on that account. I may say that the amount deposited by him in bank during the time of my absence in 1886 agrees exactly with the amount specified as having been collected. The complainant states in his testimony that he collected $30,000 on that account. He also says, and this is a fact, that he cancelled the check which I gave him for $15,000 in payment of the amount agreed upon to be paid him, and that in lieu of it he drew three $5,000, there being more than twenty days between the date of the first and the last check. He says that I stated to him when I handed him the $15,000 that there was not money enough in bank to meet it. That is not true. What I said to him was this: If you do not need that money I wish you would delay the collection of it for a few days, because if these outstanding cases should all come in at once there would not be money enough before you could return the drafts to me for endorsement, and I could send them back to you for deposit to pay your $15,000 and make remittances to clients. There was at that time and all through sufficient money to my credit to have paid

the check. He also states in his testimony that he went on collecting this money and collected the money out of which the first $5,000 check was paid. He says he did not collect it until after he had deposited enough to my credit to pay it; that he then went on collecting fees and drew another check and so on. As the whole amount of fees collected, as shown by the papers, is less than the amount of one of the $5,000 checks, his testimony in that respect is undoubtedly incorrect. If his testimony is correct that I told him there were only $20,000 coming out of these cases, in documents 70 and 225, I certainly must have trusted a great deal to his credulity or must have been very foolish to have left with him upon the very day that I concluded the trade testimony which would have convicted me of falsehood, and which I freely left with him and which he held for over twenty days.

Q. After this trade was completed did you or did you not offer to sell the complainant any of these cases? And, if so, state particularly the price and amount you subsequently received in those cases.

A. I offered to dispose to him of the cases in the list which was handed to him known as the suspended cases, saying to him that if he wished to exercise his powers there was a chance for him. Those cases are contained in this list which I file as an exhibit.

(The above-mentioned paper is filed herewith and marked Exhibit H. M. B. No. 4.)

The WITNESS: I subsequently recovered from those cases nearly $33,000 for my clients. I offered to dispose of them to him for 5 per cent. The fee in those cases was 25 per cent. I here file as an exhibit a paper which I handed to him, showing the cases where the fees were less than 25 per cent.

(Said paper is filed herewith and marked Exhibit H. M. B. No. 5.)

The WITNESS: I also file as an exhibit a list of those cases known to be outstanding which were handed to him and a list of cases which I handed to him, showing the cases that were still pending in the department, which shows the number then unsettled, as well as those which were in the document.

(The above-mentioned papers are filed herewith and marked Exhibit H. M. B. 6 and 7.)

The WITNESS: These are the identical papers handed to Mr. Cummings and which, according to his testimony, he took to his house. He has stated that it would have been necessary for him to examine something like a thousand cases in order to have ascertained the amount which these cases represented. In his exhibit already filed in this case there are exhibited 147 cases, and at no time was it necessary for him to examine 150 cases outside of those which were in the schedules which have been filed as an exhibit in order to have fully ascertained what he was selling.

Q. At the time of this sale were there not some of these cases considered very doubtful?

A. All of those on the suspended or doubtful list I regarded as extremely doubtful, as is shown by my offer to sell them to him for one-fifth of the fee if he was willing to take them. In this number there were quite a number of other cases which had not been acted upon and which upon the same principle must have been suspended or disallowed. Subsequently a large portion of those cases by due argument and producing proper evidence were allowed.

Q. State if subsequently to the sale you procured other cases which at the time of the sale you had not knowledge of.

A. From letters received from people who had heard of other persons obtaining their arrears of pay and from different sources I secured probably from 50 to 75 cases subsequently of which I had no knowledge at the time of the sale. The complainant in his testimony states that there are a great many outstanding cases. I do not know where they are, and I freely give him permission, notwithstanding the sale, to prosecute any of those cases that he can find and I will make no claim for contribution in the fee.

Q. Did you tell the complainant pending the trade that the allowed cases then in process of settelement would amount to only about $20,000 or anything equivalent to such a statement?

A. I did not.

Q. Did you say to the complainant pending the trade that the cases pending for settlement would only amount to about $75,000 or $80,000, or words to that effect?

A. I did not.

Q. Pending the trade, what was the largest sum *the largest sum* you offered him?

A. $14,000.

Q. What books, papers, and documents did you furnish him for his inspection as to those cases?

A. The books, papers, and documents heretofore mentioned.

Q. What did the complainant say, if anything, when he returned those books and papers?

A. I was out of the office when he returned them. When he came back I think I spoke to him first about it, and he said he hardly knew what to say. There was nothing definite accomplished that day. He asked my advice in regard to it, and I distinctly declined to advise him. I said, We are trading, and you must act upon your own judgment. On the next morning he came to the office and said he had been thinking it over, and if I was amind to give him $15,000 he would trade. I said that was more than I could afford to pay, but that to end the matter and have an end to the whole thing I would give it to him. I drew the receipt, which he signed, and gave him the check which is in testimony.

Q. Did he or did he not accept the $15,000 in full settlement of the trade and sale?

A. He did.

Q. State, if you please, what was the practice at the department prior to that time, as well as afterwards, as to the delivery of drafts.

A. The practice of the department had been from the foundation of the Government, so far as I have been able to learn, up to about 1885, to deliver the drafts made out to the order of the claimant to the claimant's attorney who represented the case. About that time a new order was issued by the Treasury Department saying that the draft would be issued directly to the claimant. This was prior to the settlement of these cases in August and September of 1886. As we had always managed the drafts and secured a special power of attorney to endorse each and take out our fees as per contract and remit the balance, that being vastly the easier way, we preferred so to do. The case was represented to the Treasury Department, and finally an order was issued permitting the Treasurer of the United States to withhold in his possession the drafts and give a description of them necessary to be put into the special power of attorney to secure the endorsement and then to deliver the draft to me upon the presentation of that special power of attorney. That was done with reference to this entire batch of cases, with the exception of one or two where there was a disputed attorneyship or where the claimant had requested that the draft be sent direct to him. This was not a favor especially granted to Cummings & Baker, but was done also for other attorneys practicing before the department. That order was obtained before the sale and set a precedent for such orders in future.

Q. At the time the complainant sold to you his interest in the inspector cases, state, if you please, whether he had or had not offered to take less than one-half of the fees in these cases as his share.

A. He had offered to accept one-third of the fee instead of one-half, according to the original agreement at the time the partnership was formed. As I understood it then and believe now, the trade was made at the rate of $15,000 upon that basis, and that would correspond with his statement that he expected to receive $10,000 from these cases, there being about $30,000 net fees. One-third of that would be $10,000. I so understood the trade at the time.

Q. You may state, if you please, if you allowed or paid him anything besides the $15,000 interest in the inspector cases.

A. He had become the assignee of the firm of Henry D. Cooke & Company, and, according to the ordinary methods of compensation in such cases, as near as I could learn, the amount that he would have received on that settlement would have been about $15,000, which is the amount he has stated in his testimony to be correct. He became assignee of that firm in the fall of 1884, in October. It was just pending the election, and I was in New Hampshire and was expecting him to follow me, when this failure took place. The first I saw of it was in the Boston daily papers, and I saw from the papers that Mr. Cummings had been made the assignee. He remained here and did not go to New Hampshire. I had no talk with him concerning it until after my return, some time in November. He took the assigneeship without my knowledge or consent and without consulting with me. Upon my return he said that he

expected to divide his assigneeship fees with me. In this trade I released him from that, which, according to his own calculation, was equivolent to about $7,500, and which would have made the total compensation for this trade about $22,500.

Q. State, if you please, if you made any proposition to the complainant or said anything to him in 1886 touching the proposition to close the partnership and divide the fees in the cases secured prior to January, 1885, each partner to take what, if anything.

A. As I have already stated, that was my first proposition to him—to close the partnership, each partner to retain as his own all cases which had come into the firm through his individual efforts or come to him especially since that date, and to take all the cases received prior to that date and divided the fees received in those cases. He declined this and suggested 1886 instead of 1885. I suggested the year 1885 for the reason that he had become the assignee of Mr. Cooke in 1884, the fall preceding, and after that time had devoted practically no time to the affairs of the firm; but that was all superseded by the trade by which I bought him out in the larger protion of the business we had at that time.

Q. The complainant says in his testimony that you kept the books and papers of the inspector cases under lock and key and that he did not have access to them. What have you to say in regard to that?

A. The statement is not true. It has always been my custom at night to close and lock my desk. These papers were undoubtedly locked up at night. During the day they were not usually locked, and if they were locked the keys were in that portion of my desk which was always unlocked, and I never carried them in my pocket. They always remained on the desk or in unlocked portions of the desk. There never was a time when the complainant could not have access to those papers at his own volition. When I left the city I always left the keys of that portion of my desk where these papers were. Those relating to the settled accounts were contained in the safe, which was entirely his, and in part of the safe which was open and to which he had access at all times. He knew where they were, and he never suggested that he wanted to see any of these papers at any time—that he did not see them. There was no attempt made to secrete them or withhold them from him.

The further taking of these depositions was thereupon adjourned until Tuesday, December 13, 1892, at 2 o'clock p. m.

WASHINGTON, D. C., *December* 13, 1892—2 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the complainant, Mr. Claughton and Mr. Mackey.

Present on behalf of the defendant, Mr. Johnson.

Direct examination of witness HENRY M. BAKER resumed.

By Mr. JOHNSON:

Q. Were the books and papers that you turned over to the com

plainant prior to the sale to you of his interest in the inspector cases full and sufficient enough to permit him, by reasonable consideration of and calculation from them, to enable him to obtain a fair and accurate knowledge of the value?

Mr. CLAUGHTON: I object to the question as calling for an expression of opinion from the witness.

A. They were, and I know it from my practical knowledge of the cases.

Q. Could he, by reason of his knowledge of those cases and the fees he had received from them, have sufficient general knowledge of them to enable him to approximate their value?

Mr. CLAUGHTON: I object to the question as calling for an expression of opinion.

A. He could. Any one could.

Q. Can you recall the amount of fees in those cases he had received during some years?

A. He had been paid or received fees in these cases since 1877.

By Mr. MACKEY: Is there any written evidence of that? Have you any written statement of the fees that he received?

A. No; I have not. In 1883 he received over $7,000. In 1885 he received over $18,000. The other years I do not remember.

By Mr. JOHNSON:

Q. Did you or did you not make full and correct answers to the complainant as to every question of fact he asked you in regard to these cases?

A. I did.

Q. Did you give him any advice in regard to them?

A. He asked me when he brought the papers and documents back to the office for an expression of opinion on my part and I declined to give it to him. I never advised him in the matter. The several propositions were whether we should divide the cases in the office from 1885 or 1886, as heretofore stated, or whether he should receive one-third of the fees or whether he should receive this cash payment, with the allowance of the fees in the assignee case.

Q. Please state what the report in documents No. 70 and 225 of the 49th Congress show as to these cases.

Mr. MACKEY: I object to the question because the documents will speak for themselves.

A. They show the names of the claimants and the amounts allowed to each.

Q. Did you have any books and papers that were of any practical value in determining the amounts and the number of the cases which you did not submit to the complainant?

Mr. MACKEY: The question is objected to as calling for the opinion of the witness as to what the value of the papers was.

A. I did not.

Q. Had you ever made any computation as the aggregate amounts due on the cases filed and submitted?

A. Nothing, only a general calculation of each case when filed. I have not aggregated them.

Q. Could you have at that time, without a special examination and computation, made anything like a correct estimate of the value of the cases then pending?

A. In order to ascertain that I should have been compelled to make the same calculations which it would have been necessary for any other person to make.

Q. Please state, if you know, any particulars in which you did not deal fairly and honestly with the matter of the complainant in the matter of the inspector cases.

Mr. MACKEY: I object to the question as calling for the opinion of the witness on a question of law and fact.

A. I know of none.

Q. Have you any reason in your mind to doubt that the plaintiff fully understood what he was doing and the effect of his act when he sold to you his interest in these cases?

A. None whatever.

Q. Please state when the complainant first expressed to you any dissatisfaction with his sale to you, as per his receipt dated September 6th, 1889, filed as an exhibit in this case.

A. Some time in August, 1889, when I told him that the partnership must cease existing between us.

Q. What have you to say in regard to his paper dated September 7th, 1886, and entitled "Thoughts in mind for the past few days"?

A. After I had announced to Mr. Cummings that I would remain no longer in partnership with him he first presented to me his claim that the sale was not a just one, and, to illustrate that he had so thought and did so think at the time, he said, I have some memoranda on that subject. He took out a paper and held it in his hand. I said, What is it? He said, Here are some thoughts I put down about that time. I said to him, If you have no objection to my seeing it, I would like to look at it. He handed it over to me. I read it, and after I had read it I turned around and denounced him for having such a paper in his possession for three years and occupying the same office with the man upon whom it reflected and generally in relation to it and all it contained. He did not have much of anything to say in response, and either then or the next day, I am not positive which, I asked him if he was willing that I should have a copy of it made. He said he had nothing to conceal and handed me the paper. I had a copy of it made and then returned to him the original personally.

Q. What have you to say in regard to the copy of that paper filed in this suit?

A. That copy was made by Mrs. C. L. Leas, who has from time to time done some work for me. When she returned it I asked her if she had compared it, and she said she had. I said to her that I

wished to compare it with her, and we compared the copy and original. I retained the copy, and the original I returned to Mr. Cummings. Later on, as is shown by the exhibit itself, she made oath to it as a true copy, and I added my certificate to the same. I wish to add, however, still further, that it was not such a paper as I would receive from anybody in confidence; that I did not receive it in confidence, and that every statement to the contrary is false.

Q. The complainant says in his testimony that the powers of attorney in the inspector cases were first taken in the firm name and then in your name, and that it was most convenient to have it done in that way. What have you to say in regard to this?

A. The powers of attorney were taken in the firm name, as stated, for quite a time. I then discovered that my partner was taking all of his business in his own individual name. I spoke to him about it, and he said he thought it was more convenient that way. I did not agree with him, and so stated; but he persisted in doing so. I saw that complications might arise in case of his death, and if he was going to do it I would do the same. I turned around and took powers of attorney in my cases in my name. That is the way this came about.

Q. The complainant further says in his testimony that it was a matter of simple calculation to estimate what the amount due to each man was. Is that correct and was it any more difficult in 1886, when you bought his interest in these claims, than it was when the claims were taken?

A. If one knew the beginning of the case, the nature of the case, the end of the service of claimant, and the rate of pay he had received meanwhile, it was a very plain matter of arithmetical calculation. It certainly was no more difficult to make such a calculation at one time that another.

Q. He further says that up to 1886 there were on file one *one* thousand powers of attorney and contracts, and that more than 800 individual claims had been collected. How many would that leave to be collected and for what proportions were the collections made in full and finally?

A. Of course that would leave something less than 200 cases. Many of the cases were final in their first settlement. Some of them received two settlements, and occasionally one received three settlements; but the cases then pending were all shown by the list of cases filed in the department, and that appeared as shown, by the exhibits referred to before, to be 147. It was in that neighborhood, at any rate.

Q. State, if you please, if his estimate of the number of cases pending is accurate.

A. I think it is approximately so.

Q. State, if you please, whether or not it would have been an unreasonable or an impossible task to have made an approximate estimate of the cases then pending and outstanding.

A. It was a very easy matter. It ought to have been done by any one with the possession of the data furnished the complainant in two days' time at the most.

Q. Would it have been any more laborious to calculate the cases filed than the cases outstanding?

A. Certainly not.

Q. Could such calculations have been easily made on the books, papers, and documents in the possession of the complainant during the time he retained them?

A. They could.

Q. Would it have been necessary for him to have examined 1,000 cases to have made the calculation; and, if not, approximately how many?

A. As has been shown, the whole number of pending cases at that time was only about 150. That would have been all that would have been necessary for any person to have made a calculation concerning, with the exception of the number of cases on the paper showing the cases outstanding. Those at that time were, I presume, 20 or 30 more, and they might or might not be secured, as circumstances should determine.

Q. Did the complainant ask you at any time prior to his sale to you for any books, papers, or documents relating to these cases or for any specific information as to any case which you neglected, declined, or refused to give him?

A. He did not.

Q. Did he ask you for any information touching these cases which you refused to give him?

A. He did not prior to the sale.

Q. Did you ever say to him that the trade would be a good one for him or for his benefit?

A. I did not; I did not give him any advice on the subject.

Q. Did he ever ask you for the aggregate net amount of the cases then being paid?

A. He did not; he had the documents which showed it.

Q. Did he ever ask you for the aggregate of the cases then filed and in the process of adjustment or of the outstanding cases?

A. Not that I remember.

Q. What was the proceeding of adjusting these claims, and were the claims all of the same character; and, if not, how were they divided?

A. The claims were of the several characters mentioned in my testimony of yesterday. They were, in one form or another, before all the officers which I mentioned in my testimony yesterday. None of them, however, came to a final adjudication as to the amount due except by a settlement of the account in the first auditor's office and a re-examination and approval of that in the office of the commissioner of customs. Before the other officers and tribunals the questions were questions of law, and before that tribunal they were questions of law and fact put into practical effect by being reduced to the amount in dollars and cents due to the claimant, which was a difference between the amount he had been paid and the amount which was his legal salary under the statute.

Q. Please state who argued those cases, and in that connection state whether or not those cases were easy of settlement.

A. All of the arguments before all of the officers and tribunals were made by myself. The separate law points involved were many, and some of them were argued extensively and were combated on the part of the Government with vigor. It required time and attention and study to meet them.

Q. After 1886 state, if you please, what, if any, aid the complainant gave you in these cases.

A. He was here in the office with me, and, I think, in a few instances he offered to put some affidavits that I was preparing in blank into typewritten manuscript; that was in a few instances. In a few instances as I was preparing special letters to be sent out to my clients, when the money was ready for them, the letters being practically the same, they were prepared on a modified hectograph, and the complainant manipulated that hectograph for me once or twice by his own offer. On one or two occasions he saw the Assistant Secretary of the Treasury in connection with the delivery of the drafts. Otherwise than that I have no remembrance of his ever doing anything.

Q. After the sale mentioned in 1886 what did you do, if anything, that would lead the complainant to believe or suppose that he had any interest in the inspector cases or the fees resulting therefrom?

A. I have no memory or knowledge that I ever did or said anything which could in any manner lead him to suppose that I regarded him as having any interest in or claim to them or for any compensation in relation to anything he did in the cases. Whatever he did was altogether voluntary, and I suppose his services were of that character until he made claim in 1889 for payment for services before the Assistant Secretary of the Treasury in relation to the drafts. I then offered to compensate him for that service.

Q. The complainant, in his testimony-in-chief, says that you said to him, in 1889, that the fees due in 1886 amounted to $20,000 or $22,000. Please state if that is correct.

A. It is not.

Q. The complainant further says in his evidence-in-chief that he could not discover the amounts of the allowances in the inspector cases until 1888. Please tell us what you have to say in regard to that statement.

A. If he could not, I have no knowledge or supposition why he could not. I know I could have ascertained them in 1886 as well as in 1888, and I presume any other person could.

Q. Will you please state the circumstances under which your partnership with the complainant was dissolved in 1889 and at whose suggestion the partnership was so dissolved?

A. The partnership was dissolved at my request and upon my stating to him that I would no longer continue in partnership with him. Then, for the first time, I heard that there was any doubt in his mind concerning the trade of 1886. He was very anxious even then to continue in the partnership, but I was firm in the matter.

Then the trouble began out of which this suit and my suit in assumpsit arose.

Q. Was there anything said as to who should retain the old office in that dissolution?

A. I asked him if he would vacate the office, and he replied that he would, and after a time he did so.

Q. Something else is said in this case about the Heustis case. Please give a detailed history of that case.

A. The Heustis case was one of the early cases secured by Mr. Cummings. Mr. Heustis was the inventor of a patent process of casting shot and shell which was used by the Government, especially in the navy yards, during the late war. He asked compensation for the use of that patent. The case has been in Mr. Cummings' possession for fifteen years or more, and still remains unsettled. It has been before Congress, and I think is now before the Court of Claims, having been referred there by the Navy Department. Mr. Cummings had always recognized that I held a half interest in the fees resulting from that case, although I think it was procured prior to my connection with him in the firm. That interest came from certain advances that I had made for expenses in connection with the management of the case. Some time before we separated he came into the office one day and said that he had made an arrangement with Mr. Lewis Abraham to take all the testimony in the case and argue it before the Court of Claims. I asked him why he had done so. He said he thought it was the best way. I replied that I thought this firm could manage its own business without employing outside help, and if it could not it had better go out of business. We had quite a talk about the matter, and he begged me not to make a row about it, as he had made what he thought was a favorable arrangement with Mr. Abraham. I asked him what it was, and he said that the fee was to be divided into three parts. Mr. Abraham was to pay the expenses of taking testimony and argue the case. He claimed that Mr. Abraham had some advantages for doing this, being a patent expert, and said that he had given Mr. Abraham the fee as 33⅓ per cent., whereas the actual fee for which he had contracted in the case was 50 per cent. He asked me not to tell Mr. Abraham that he had deceived him in the matter. I still continued to denounce the whole transaction, and I presume Mr. Cummings must have spoken to Mr. Abraham about it, because subsequently Mr. Abraham came in to talk to me in connection with the matter. I told him that I was dissatisfied with it, but as I had not taken any active part in the case I would leave it to him and Mr. Cummings to do what they had a mind to do with it. From that day on I have had nothing to do with the case.

Q. Where were you at the time the complainant was appointed assignee of Henry D. Cook & Company?

A. I was in New Hampshire.

Q. Did he before accepting the appointment advise or consult with you touching his appointment?

A. He did not. The first I knew of it was when I saw it in the Boston daily papers.

Q. After he had accepted the appointment as assignee state how much of his time he gave to attending to his assigneeship.

A. So far as I know, he gave nearly all of his time to the assigneeship. At least he gave not one-tenth of his time to anything pertaining to matters of the firm proper.

Q. State, if you please, how much, so far as you know, the complainant secured in fees in his own cases from 1884 to 1889, when the firm dissolved.

A. I know of only $5,800, and I have not received my share of that.

Q. Can you tell of any other cases in which he collected fees that were not turned over to you?

A. I have not such accurate knowledge that I would wish to state.

Q. You have, I believe, a suit at law pending against the complainant, which suit resulted in the filing of this bill by the complainant against you to restrain the prosecution of that suit. Is that so?

A. I have such suit at law.

Q. The plaintiff in his cross-examination says that you and he had the right to take any kind of claims on your own individual account and instances pension business. Please state what was the understanding in respect to that.

A. I have never had such an understanding as he states. The firm agreement was that all of our professional business should be on joint account. While I was working more hours in a day than he was working in a week I asked him on several occasions to attend to business out of which I thought fees could be derived. I once suggested to him that the pension business opened up a great field, and that other people were going into it and making a great deal of money. I suggested that he give his time and attention to that. He replied that he would not do anything with the pension business; that he despised such small things and he was not going to do any- with it. He said that if I wanted to I might do it and have all the fees. I presume that is what he refers to.

Q. If you have not already answered as to the various times that you proposed to the complainant to dissolve the partnership, please state it now, with the particulars as to why you so desired.

Mr. CLAUGHTON: In order that it may not appear that we are listening to testimony without objection, I will interpose an objection to this testimony upon the ground that these questions are entirely irrelevant to the matters in issue in this suit. They are therefore objected to on that ground.

A. I distinctly remember of proposing such dissolution to him in 1883 on the ground that he was not performing his share of the partnership business; that he was generally gossipping and talking in a way which it was improper for one partner to talk in regard to another. In 1886, upon the same ground, I again suggested it and yielded only upon receiving charge of the business, as hereto-

fore shown. I again suggested it in 1889, when the partnership was dissolved.

Q. The complainant says that you urged him only for a settlement of the expenses between 1886 and 1889. Will you please state what the facts were?

A. It is not true. I urged him in 1887 and in 1888 and in 1889 not for a settlement of expenses only, but for a settlement of everything that was outstanding between us, and I did it persistently.

Q. The plaintiff has said a great deal in his testimony about the Hellen note. Will you please state the facts and circumstances touching that note?

A. Mr. Hellen was a clerk in the office of the commissioner of customs. He came to me one day and said that he wanted to borrow a thousand dollars; that he had as security some property in which he had a life estate, and that he also would get his life insured and make that good, and had the insurance assigned properly. He offered a good inducement for the use of the money. I reported it to Mr. Cummings, knowing that he had at that time some funds on hand. He wanted to know what I thought of it, and I told him that I believed it to be perfectly safe. He finally said that if I would go in with him on it he would loan the money. I said, All right; I will do so; and the loan was made. Mr. Cummings retained all the papers in connection with it. The life insurance ran for one year. About that time I went to Mr. Hellen and asked him if he had renewed his life insurance, and he said he had. I asked him if he had the receipt, so that it might be filed with the other papers, and he said it was at his house, but he would bring it down in a day or two. From time to time, as I saw him about it, he did not remember to bring the receipt, and shortly afterwards he was taken sick and in a few weeks was dead. Subsequently it appeared that the insurance was not renewed, and consequently the insurance and the life estate both went out together. Under my agreement I was bound to Mr. Cummings for one-half of the money. I asked him if he cared for it then, and he said he was in no hurry, and so the matter went on. It went on for several years in that way, he understanding all the time that whenever he wanted one-half of that money, with the interest, he could have it by asking for it. In 1888, at one time I asked him if he had figured up the amount, for I wanted to pay him. He figured up the amount. I believe he states it was thirteen years after the transaction, but at any rate it was a long time. He had no note and nothing to show the transaction except my word and personal honor that I would assume one-half of it. To show that I paid him in full I file herewith a cancelled check with which I paid him, showing that the amount was $810. (Said check is filed herewith and marked Exhibit H. M. B. No. 7½.)

Q. The complainant, in his testimony, refers to an interview that he alleges that he had with the Assistant Secretary of the Treasury, Mr. Conant, and Secretary Bristow. Please state whether or not any of the interviews complainant may have had with those gentlemen were at your request touching the inspector cases.

A. They were not done at my request, and I think they were an injury to the cases. When I found out that he had been about it, I protested and urged him never again to take any action in that semi-social-interview way in relation to cases without first consulting me, which request he never conformed to.

Q. State what were your personal relations with Mr. Bristow, Mr. Mahan, and Mr. Reynolds.

A. I never had but one interview with Mr. Bristow in my life. That was not of over five minutes' duration, and was entirely pleasant. He did what I asked him to do. If he, as the complainant says, has any hostility to me, I never was aware of it, and I do not believe it. So far as Mr. Mahan was concerned, he was the first auditor of the Treasury; it was his duty to state these accounts, and he absolutely refused to state the accounts or to take any action in connection with them. He sat there in his official capacity as a block to them. He was a man of very bad personal habits, and, as he would not do his duty, I tried my best to get him removed from the office, and in the course of time he was removed. Mr. Reynolds succeeded him in that office. I unquestionably aided Mr. Reynolds considerably in his appointment and was always on good terms with him, so far as I know, during his incumbency in the office. Of course, we did not always agree in regard to these cases or in regard to individual cases; but we were always on friendly terms, and on such terms as is usual between an officer of the department and an attorney practicing before him. Any representations that our relations were not such, if true, is based upon something of which I never had knowledge.

Q. Touching these inspector cases, the complainant has said in his evidence that he wrote fully as many letters as you did, and did as much work in and about these cases as you did. Please state what the facts are in that connection.

A. He did not write one letter to my one hundred, and his proportion of the work was no greater.

Q. Were these inspector cases filed when received, or were the powers of attorney retained for a time, ordinarily?

A. Ordinarily they were filed upon the same day that the power of attorney was received. Of course there were exceptions to that, but that was the general rule.

Q. The complainant has said in his testimony that he had no business to look into your desk, even when unlocked. Do you know of his examining matters in your desk during your copartnership?

A. During that time the usual relations in regard to papers pertaining to a firm which I suppose exist between partners existed between us. I have frequently seen him pick up papers at my desk and go to my desk for papers, to which I never objected, and which I did not suppose was dishonorable on his part.

Q. Do you know whether or not there was a more appropriate or better place for keeping these papers than the place in which you did keep them?

A. There was no other place in the office in which they could be appropriately kept.

Q. Did you ordinarily leave with him when you left the city the keys to that part of your desk where these papers were kept?

A. I did.

Q. Did he, prior to 1889, complain to you that he did not have access to these papers?

A. He never did.

Q. The complainant says in his testimony, speaking in connection with his "Thoughts in Mind," that he interviewed Judge Richardson by your advice and at your request. Please tell us what the fact was about that.

A. It is not true that he interviewed Judge Richardson at my request or by my advice, and when I first learned of it I regarded it as indelicate and improper, and I so regard it now.

Q. He also says that he permitted you to take a copy of his "Thoughts in Mind" in confidence, and that he did not expect you to let that paper pass out of your hands to be copied. What have you to say in regard to that?

A. When I asked him for permission to make a copy of it he said that he did not care who knew it. It was not such a paper as I would receive from anybody in confidence, and I certainly could have had no desire to retain a copy of it simply to read it in privacy.

Q. The complainant also refers to his services in your behalf in getting from the Treasury drafts issued in payment of the so-called inspector cases. Please state the facts in regard to this, and whether or not a similar arrangement had been made prior to the sale of September 6, 1886, and whether what he claims to have accomplished for you was done by the Secretary of the Treasury for other attorneys.

A. The same rule applies to drafts issued prior to the sale of 1886 as subsequently, with some unimportant modifications. The precedent was established in connection with the drafts of 1886, and the same rule was applicable to many other attorneys. Subsequently the arrangement was only to continue that order to drafts issued later. I asked the complainant on a few occasions to see the Assistant Secretary of the Treasury, Mr. Maynerd, who had charge of these matters, for the reason that the complainant claimed to be on terms of especial acquaintance with him, through his connection with him in the D. K. E. Club, and that he could approach him more readily than myself. Upon a later occasion I found no difficulty in having the arrangement continued without the services of the complainant.

Q. Did the complainant succeed in having any drafts retained for you in any cases where the attorneyship was in dispute or when the claimant asked to have the draft sent to him?

A. He did not.

Q. State whether or not at any time you offered him for his services — any case $300.

A. I did not.

Q. What have you to say in regard to his claim for pay for his services in this matter of the inspector cases?

A. I was trying to get him to pay me a balance due, which is now in suit, aggregating some $2,700. He then, for the first time, suggested to me that he ought to have pay for his services in procuring the drafts for me. I said, Very well, if you think so I am ready to pay you any reasonable compensation. I unquestionably did as much for you in connection with the Cook assignee matter, but I am making no charge for it. I asked him what he thought it was worth and I could get no definite response from him. I finally offered him $500 and asked him if that would be satisfactory. He refused it, and there the matter ended.

Q. State, if you please, when the complainant first intimated to you that he might bring suit to set aside the sale of September 6, 1886, of the inspector cases.

A. After I informed him that unless he paid me the balance due, $2,700 and more, I should bring suit against him for that amount.

Q. Was that before or after he claimed to have rendered you the services touching these drafts?

A. It was about the same time, and I think afterwards.

Q. Did he ever offer to you to call it even with you if you would not push your demand for $2,700, included in your suit at law against him, and say that he would not raise the question as to the validity of the sale of September 6, 1886; if so, what did you reply?

Mr. CLAUGHTON: I object to this question, as it seems to refer to an offer of compromise or settlement, and therefore is not competent testimony.

A. On several occasions, as I was urging him to pay what he owed me, he made this suggestion. I at once declined upon every suggestion of it, saying that I knew he owed me that money, and if I owed him any money that I was always ready to pay it, and that the sale of 1886 was a straightforward, honest transaction, and that I should stand by it and submit to no blackmail.

Q. What assistance, if any, did the complainant render you in 1886 in any of the cases?

A. Nothing, except as heretofore stated.

Q. State, if you please, whether the complainant collected and deposited any money for you in these cases after that year.

A. He did not collect any money in any of the inspector cases or deposit any money in those cases to my credit after the first day of October, 1886.

Q. How do you know that fact?

A. From the fact that the sheets in which these accounts are kept do not show any entry in his handwriting, and that there was no deposit made in bank to my credit which I myself did not make.

Q. What have you to say with regard to the case of the steamer Baltic and the Cosgrove and McCloskey coal cases, referred to by the complainant in his testimony?

A. The case of the Baltic was that of a steamer. The case of Cosgrove & McCloskey was the coal case. The complainant has testi-

fied that he collected moneys in these two cases, and, although under our terms of partnership he was not under obligations, he divided the fees with me. Both statements are untrue. Our partnership began in 1874, with the limitations heretofore stated, and the power of attorney on file in the papers regarding the steamer Baltic bears date December 16, 1874, and hence was within the terms of our partnership. The application in the case of Cosgrove & McCloskey for payment for coal used by the United States, on file with the papers, is dated September 15, 1875, and the power of attorney authorizing the prosecution of that case is dated May 8, 1875. These dates I have taken from the papers in the several cases from my own personal examination. The complainant is in error as to the papers procured by me in the coal case. He states that he was in Pittsburgh, and wrote to me to secure from the office of Mr. Charles Ewing, upon an order which he sent me, certain papers, which I did. The facts are that the complainant procured that order in Pittsburgh and brought it here himself and endeavored to secure the papers. He was at that time a member-elect to the New Hampshire house of representatives, and early in June went there to attend to the session of the legislature, leaving the order with me. Mr. Ewing was out of the city a large portion of the summer, and before the adjournment of the legislature and the return of the complainant I had found Mr. Ewing and secured from him the important papers in the case, which I handed to Mr. Cummings upon his return, which was probably some time in September.

Q. I wish to recur once more to the sale by the complainant of his interest in the inspector cases to you. Please state whether or not there was, just before or at the time of the same, any fact, any paper or papers or documents that were within your knowledge, touching those cases, from the beginning up to the time of the sale, that the complainant was not aware of.

A. No paper whatever of any importance in the determination of the value of the cases which he was proposing to sell.

Mr. MACKEY: I object to the foregoing question and answer upon the ground that it would be impossible for the defendant to know what the complainant knew.

The taking of the depositions was thereupon adjourned until Saturday, December 17, 1892, at 10 o'clock a. m.

WASHINGTON, D. C., *Dec.* 17, 1892—10 o'clock a. m.

Met pursuant to adjournment.
Present on behalf of the complainant: Mr. Claughton.
Present on behalf of the defendant: Mr. Johnson.

Whereupon C. L. LEAS, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined—

By Mr. JOHNSON:

Q. State your full name.
A. Cordelia L. Leas.

Q. Will you look at the paper I now hand you, dated Septemb 7, 1886, and state in whose handwriting it is, if you know?

A. It is in my own handwriting.

Q. Will you please state, if you can, when you wrote that pape

A. I wrote that paper in 1889—about August, 1889.

Q. At whose request?

A. At the request of Mr. Henry M. Baker.

Q. Please state whether or not this paper is a true copy of t original paper handed you to copy, and with whom you compar it with the original, if you did so compare it.

A. That paper was handed to me by Mr. Baker, and it is a l eral copy. I made a literal copy and it was compared. I compar it with Mr. Baker afterwards.

Q. Is this your certificate made before Mr. Ellis on the 10th d of February, 1890?

A. Yes, sir.

Q. The certificate there made is true in ever- respect, is it?

A. It is.

Cross-examination.

By Mr. CLAUGHTON:

Q. Do you know where that paper had been between the time you- copying it and the time you made the certificate to it?

A. No, sir.

Q. Did you at the time you made this certificate to it compare with the original?

A. No.

Q. You do not know in whose possession it had been from t time you copied it until you certified to it?

A. I do not know. It was in Mr. Baker's possession, I suppo

CORDELIA L. LEAS

Subscribed and sworn to before me this — day of ——, 1892.

——— ———,

Examiner in Chancery.

The further taking of these depositions was thereupon adjourn until 2 oclock p. m., Thursday, Dec. 22, 1892.

WASHINGTON, D. C., *Jan'y* 5, 1892—3 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the defendant: Mr. Johnson.

No appearance on behalf of the complainant.

The taking of these depositions was thereupon adjourned, at t request of Mr. Claughton, counsel for complainant, until Saturda January 7, 1892, at 1 o'clock p. m.

WASHINGTON, D. C., *Jan'y* 7, 1892—1 o'clock p. m.

Met, pursuant to adjournment, at the office of William Herbert Smith, examiner in chancery.

Present on behalf of the complainant: Mr. Mackey and Mr. Claughton.

Present on behalf of the defendant: Mr. Johnson.

Cross-examination of HENRY M. BAKER.

By Mr. CLAUGHTON:

Q. Mr. Baker, how many cases did the firm of Cummings & Baker have before the supreme court of the District of Columbia?

A. I do not think the firm as such had any. I do not remember that they had.

Q. There was no necessity, then, for any member of the firm qualifying in that court, was there?

A. I qualified there. You can inquire of the other member about his qualification.

Q. Do you remember whether or not Mr. Cummings ever had a case there of his own?

A. I do not know that he had.

Q. How many cases did you argue in the Court of Claims?

A. I recall four at this moment.

Q. Just name them to the stenographer.

A. There was the case of Wallace against The United States, the case of Adams against The United States, the case of Bradford against The United States, and the case of E. G. Jayne & Company, a departmental case, being for the distributive share of a moiety. It was a case in which it was to be decided which of the parties was entitled, the United States not objecting that it owed somebody.

Q. What were the other three cases?

A. I have given them.

Q. You gave the nature of the last case.

A. The Wallace case was on account of some bonds or securities of the District of Columbia. The Adams case and the Bradford case were inspector cases.

Q. Test cases?

A. Test cases; yes, sir.

Q. How many cases did the firm of Cummings & Baker have before the Supreme Court of the United States?

A. One.

Q. What case was that?

A. That was the case of the United States against Beebe and others.

Q. How much did that case involve?

A. I do not know. It involved the title to a considerable portion of the city of Little Rock, Arkansas.

Q. It was a very large case, was it?

A. Yes, sir.

Q. Who argued that case in the Supreme Court?

A. I did.

Q. What was the result?

A. The result was that the court sustained the demurrer, which turned upon the point that the case was not brought in season.

Q. That is, you lost it, did you not?

A. The appeal was not sustained.

Q. That was a pretty heavy case, was it not?

A. I told you what it was.

Q. You said you had estimated the value of it, did you not?

A. I don't know that I ever made any estimate. I have heard it estimated all the way from hundreds of thousands of dollars up to millions, provided it could have been sustained in all its points.

Q. Do you remember whether or not Mr. Cummings advised that some attorney more familiar with the practice in the Supreme Court should be retained in that case?

A. I was not aware of it.

Q. Do you not remember that?

A. I asked Mr. Cummings, as he had given more attention to it while it was pending in the Land Office and other places than myself, to take charge of it and argue it himself, and he declined. I asked him to take charge of it and attend to it, and he informed me that he had not succeeded, or did not succeed, or did not try, I don't know which, and the time was approaching and somebody must argue it, and I did it at his request.

Q. You do not remember that he counselled that somebody more experienced in the practice of the Supreme Court should be retained?

A. I don't think he did.

Q. Are you prepared to swear positively that he did not?

A. I would not swear positively that in various talks that was not suggested, but I don't think it was.

Q. Is that the brief you used in that case (handing a paper to witness)?

A. It is.

Q. How much of that brief did you prepare?

A. I don't know, sir.

Q. Look at it and see.

A. I prepared a considerable portion of it. The whole of it was rewritten by me, and I had some notes which had been put in by Mr. Cummings, but, as I stated in my testimony-in-chief, Mr. Cummings was not reliable in these matters, either upon the reference to his cases or in his quotations, and I had had experience enough in it, so that I would not sign the brief until I had been through it. His form of expression is not good, and the better portion of it I rewrote entirely. The other portions of it—that part of it—is in his own language.

Q. Examine that and tell me what you did prepare.

A. I cannot tell you, sir, at this date. I simply know the general fact.

Q. Do you know whether or not the brief as prepared by Mr. Cummings had been printed?

A. There were some preliminary briefs printed, or one or two of them, which I think was signed by the firm name. Part of it I had something to do with. How much of those were incorporated in this I cannot tell you without making an examination.

Q. Could you tell from examining that brief?

A. From examining this alone, no, sir.

Q. You would not recognize your handiwork, then?

A. I should not, in that distribution of it; nor, sir.

Q. Mr. Baker, I wish you would charge your memory and see whether or not you can recall that Mr. Cummings prepared a brief and that you added about a page and a half; that your page and a half was added to his printed brief, and they were bround up together.

A. I do not recall any such state of affairs, and I don't care whether it was so or not for the purposes of this case.

Q. What I wanted to get at was simply this, if it is possible for you to take time and examine that brief and tell us how much of it was yours and what part of it was the brief of Mr. Cummings.

A. I am willing to give an answer to that; that brief is a mosaic, and it will be impossible for me at this time to separate verbally what was mine and verbally what was Mr. Cummings'. I never was satisfied with that brief because there was so much of Mr. Cummings in it.

Q. Mr. Cummings seems to have reciprocated your attachment in that respect because there was so much Baker in it.

A. I am entirely satisfied that such was the case.

Q. We will pass from that. You have testified, Mr. Baker, in respect to the amount of work you did in these inspector cases. What branches of your business were under the charge and care of Mr. Cummings?

A. He generally took the cases that related to old war claims. There were some exceptions, but that was the general division.

Q. Who had the cases before the Interior Department?

A. That depended upon what they were and the circumstances connected with them. He had some and I had some.

Q. Who had those before the Attorney General?

A. Both of us. I presume I had some. I don't know whether he ever went there or not.

Q. You cannot say now to what extent he prosecuted the business of the firm outside of these inspector cases?

A. What do you mean; what proportion of it?

A. No.

A. Who had the supervision and general control, just as these cases were committed to you? To whom was committed the prosecution of your matters before the other departments of the Government?

A. There was no division of that kind.

Q. That is to say, you had exclusive control of these inspector cases?

A. No, sir.

Q. Then nobody had any exclusive control of any cases?

A. Nothing, only by general consent.

Q. Of course, it had to be by general consent.

A. That is, either one of us had some business which we generally carried on, unless the other one was asked to assist or the other one was out of the city, or something of that sort?

Q. There was primarily a distribution of business of certain classes between the members of the firm, and occasionally one asked the other to assist in his particular department; is that what you say?

A. No, sir.

Q. State what you do mean.

A. I mean to say there never was any formal distribution of business in the firm; but that as circumstances might dictate, or as a person may have had a case of a like nature, it ordonarily passed into the control of that man. There was no written or established distribution of the business.

Q. Was there any actual distribution of the business?

A. Not an unchanged distribution of the business.

Q. Was there ordinarily an actual distribution of the business?

A. Ordinarily certain cases were managed by Mr. Cummings and certain cases by myself.

Q. Do you mean certain cases or certain kinds of cases?

A. Well, certain kinds of cases. To illustrate, he generally took charge of what was known as the old war claims, and I had everything arising out of the revenue laws.

Q. Can you name now any cases which you prosecuted before the Land Office?

A. I cannot remember the names of the cases that I had or that he had.

Q. I am not asking about "he." I am asking about you.

A. No.

Q. Can you name any cases you prosecuted before the State Department?

A. I do not now recall any that I ever had before that department.

Q. Before the Navy Department?

A. I had some business before the Navy Department, but I cannot tell you the names of the cases.

Q. How many cases had you there?

A. I don't know, sir.

Q. Many or few?

A. Few.

Q. How many before the Attorney General?

A. I was before the Attorney General in some of these inspector cases.

Q. I refer to cases outside of those.

A. There were some other-; I can't tell you what *there* were.

Q. There were how many?

A. I cannot tell you.

Q. Many or few?

A. There were not a great many. I cannot designate the cases that I had through a fifteen years' practice.

Q. In your testimony, Mr. Baker, you stated very positively that you had been for some time insisting upon a dissolution of the firm of Cummings & Baker. Did I apprehend you correctly?

A. You did.

Q. State how strenuously you insisted upon that dissolution and when it began.

Q. I suggested it, I think, once or twice in a general sort of way, before 1883. In 1883 I very strenuously urged it, and Mr. Cummings as earnestly deprecated it. He said he did not see any reason why we should separate.

Q. I am not asking as to what Mr. Cummings said, but what you said.

A. I said he was not performing his duty as a partner.

Q. In respect to your urging the dissolution of the partnership. I do not care about the grounds of it.

Mr. JOHNSON: He will have to state the grounds.

A. His personal conduct was not satisfactory to me in relation to firm matters and in relation to my own private matters, and I was not contented to remain with him.

Q. Now, having made your little speach, full of bile, will you answer my question? Did you strenuously urge a dissolution of the concern after 1883 up to the year 1886?

A. I mentioned it in 1885, I am confident. I could not say whether I did in 1884 or not.

Q. Did you in 1886?

A. I did.

Q. Were you insisting upon it at the time that this assignment of the inspector cases was made to you?

A. I was.

Q. Was your insistance as urgent or less urgent than it had been before?

A. It was more so. My point was that I wanted the firm to end.

Q. And that spirit on your part and that urgency was insisted upon by you at the time of this sale; or had you relented any before that time?

A. I think that was still a matter that was open at the time of the sale.

Q. I do not know that I understand you. Were you at that time still pressing for a dissolution of the partnership?

A. I was.

Q. How long did you remain partners after the assignment of his interest in the inspector cases?

A. About three years, though I urged the dissolution afterwards——

Q. Now you see you are not answering any question of mine.

A. If I may be permitted to state, I think I am answering as properly as your witness did.

Q. I am not comparing witnesses at all. Is it a fact, Mr. Baker, that though at the time of the assignment you were urging a dissolution of the copartnership, you still continued the copartnership three years after the assignment?

A. The fact is it was continued because I could not get him to agree to discontinue it.

Q. But you could have restored to legal process?

A. Certainly.

Q. Mr. Baker, I understood — to testify that on the day that you gave the check on your bank for the $15,000 that there was sufficient money in bank to pay it.

A. Yes, sir.

Q. You still say that?

A. I do, sir.

Q. And there was sufficient money in bank to pay it the next day?

A. Yes, sir.

Q. You have no doubt about that at all?

A. Not a partic*al*.

Q. In reference to those two books which you have in your hand, marked Exhibit- H. M. B. Nos. 1 and 2, I understood you to say these were the identical books you had handed to Mr. Cummings.

A. Yes, sir.

Q. Do not these books contain all the inspector cases, as well *as* those represented by other attorneys as those represented by Cummings & Baker?

A. The- contain all those that were at that time reported to Congress for appropriation, whoever might be the attorneys.

Q. And there were other cases represented by other attorneys?

A. There were.

Q. Then from looking at these books would Mr. Cummings have been able to tell what was the amount of the cases of Cummings & Baker?

A. He would.

Q. How?

A. Because they contain marks which were explained to him, showing which were the Cummings & Baker cases and which were not.

Q. What marks?

A. In this book, No. 70, I think all the cases were Cummings & Baker cases, and in No. 225 those that have not the check-mark before the number were not Cummings & Baker cases. They are also checked in the interior, after the name. Those in both books which have the blue pencil mark after the name were Cummings & Baker cases where the fees were less than the ordinary fee of 25 per cent.

Q. You have looked at those marks?

A. I have, sir.

Q. Who made them?

A. I did, sir.

Q. You are prepared to swear that these marks were on these

books, and that these are the identical books that you handed to Mr. Cummings?

A. I did not say so.

Q. Are you prepared to say?

A. I am prepared to swear that I made the marks, and, as I stated in my prior testimony, I believe those to be the books which I handed to Mr. Cummings and explained to him the nature and meaning of those marks.

Q. You still adhere to that?

A. I do, sir.

Q. Will you state whether Mr. Cummings did not have copies of those very records himself?

A. Of those books?

Q. Yes.

A. There were ordinar-ly two or three copies of those reports procured either by Mr. Cummings or by myself, and sometimes they were on his desk and sometimes they were on mine. I know Mr. Cummings had those books or similar books long before the trade, and I think those were the identical books that he had and took home with him.

Q. You stated in your deposition that the books he took home with him were the books you handed him?

A. The books that I put into the pile all together.

Q. You say that he had some of these books before the trade?

A. Yes, sir.

Q. And that you thought he took those home with him?

A. No; I say he had some of those books before the trade; before he took the books and papers to his house; and I think, at the time he took the books and papers to his house, those identical papers were taken with them.

Q. You mean to say these books were furnished by you, and he took these along with the others that he had—not furnished by you?

A. I don't know whether he had any at his house or not. I simply know this, that along with the books and papers taken by him to his house were marked copies, showing just what those show, and I believe those to be the books which he took and which I put into the file of the books and papers which he took along with him.

Q. I understand you to say you swear positively that you handed to him books like these?

A. Or those.

Q. Or these identical books, with these remarks, checking off the cases that belong to the firm of Cummings & Baker?

A. I do so, sir.

Q. What was your purpose in checking off those things for him?

A. To give him the facts which I had compiled from the documents which he had.

Q. Be a little more definite. What was the reason you wanted him to have these facts?

A. That he would know what he was trading.

Q. In other words, you handed him, in the fairness of your negotiation, these books with these check- on them for the purpose of giving him all the information necessary for deciding, upon his own judgment, whether he would make the trade then proposed?

A. As to that part of it, I did.

Q. Now, I ask you, Mr. Baker, if, at the time you handed him these books for that very creditable motive, you did not have a paper which showed distinctly and clearly upon its face exactly what number of cases had been already appropriated for and the amount.

A. I do not think I had the paper at that time. I had the paper which was in evidence here made up somewhere along that time, but my impression is it was made up subsequently.

Q. I hand you now a paper marked H. M. B. No. 3, and ask you to state what that paper is.

A. That paper contains a list of the parties for appropriations made in the year 1886, according to the documents 70 and 225, which were in the attorneyship of Cummings & Baker, showing the name of each client, the amount allowed him, the fee according to the fee agreement, the amount which should be remitted to him, the date when it was remitted, the amount remitted, the number of the check by which it was remitted, the date of the check, and also another sheet which shows, in part at least, the amount paid to other attorneys for assistance in these cases.

Q. Now, Mr. Baker, would anybody investigating that subject with these papers in his possession have any occasion to look at the documents which you have just been testifying about?

A. Not if he were satisfied of the accuracy of the other paper.

Q. In other words, does not this paper about which I am now questioning you contain all the cases of Cummings & Baker that are mingled with all other cases in these public documents?

A. That paper is supposed to contain them.

Q. Will you state whether it does or not?

A. So far as I know, it does accurately.

Q. Then if this paper had been handed to Mr. Cummings there would have been no need for checking off anything in the other book, would there?

A. Not except by way of comparison.

Q. He could have gotten no further information from the congressional documents in respect of the matters that you were negotiating for than is contained in this paper?

A. I presume not.

Q. Why, then, did you not hand him this paper?

A. Because I think it was not in existence at that time.

Q. When was it prepared?

A. It was prepared just about the time the drafts began to be issued. It was after the appropriation was made which was directed by documents numbered 70 and 225.

Q. Have you not already testified that you handed him this very paper the day after the transaction?

A. Yes; but I was talking about the time he took the books and

papers to his house. These other sheets were lying on my desk, day in and day out, and he saw them.

Q. The- were lying on your desk, day in and day out, when?

A. After the books and papers which I have testified were taken to his house, and then this paper was in use, as the cases were being settled and daily entries were made in it during that time according to their several dates, of which Mr. Cummings had full knowledge in every respect.

Q. I shall have to be a little more direct. Will you state whether or not this paper was in existence on the 6th day of September, 1886, when this transaction was made?

A. It was.

Q. Then when he was asking you for information upon the subject, such as justified you in handling him these public documents to advise himself as to the state of the matter, why was it that you did not hand him this paper?

A. As I have said before, at that time I am not certain that that paper was in existence.

Q. You are not certain that this paper was in existence on the 6th day of September, 1886?

A. I am; but he took the books and papers to his house some three weeks prior to that, at least.

Q. But before you consummated that trade with him did you or did you not have this paper?

A. I did.

Q. Was he not, up to the very point of accepting your check, still considering whether he would accept it or not?

A. I do not know. You can ask him about that.

Q. What took place on the morning of the day when the transaction was consummated?

A. He came into the office and said he had been thinking it over, and if I thought it was best for him he would take $15,000. I said, I have no advice to give you; that is more than I think I ought to pay you, but to end the matter I will do it. He then said he would take the check.

Q. Where was this paper when that conversation took place?

A. It was in the office.

Q. Had you ever handed it to him?

A. I am very confident I had. I cannot say positively.

Q. Why, Mr. Baker, you have sworn you did not show it to him until the next day.

A. I have not. I have sworn that I did show it to him the next day, but not that I did not show it to him before that time. This paper was in use, as the entries on it will show, for several days prior to that time. It was there in the office, open to his inspection as it was to mine, only that I made the entries in it and he did not. That is all there is of it. When that paper was prepared—the exact date—I cannot tell, but it was prepared prior to any date there is on it, whatever that may be.

Q. Will you please state now whether you are prepared to say

that you ever handed that paper to Mr. Cummings or called his attention to it prior to the 7th day of September, 1866?

A. I have no doubt on that point whatever. What transpired as to any individual paper in the office on any given date I cannot tell you, but I have not a particle of doubt but that Mr. Cummings prepared that first page of entries with me from the documents, and that was prepared prior to any date therein of the remittance of a check.

Mr. CLAUGHTON: I want to put on the record an objection to the witness persisting in giving his doubts and opinions in answer to my questions as to facts.

Mr. JOHNSON: The witness has promptly, fully, and explicitly answered your questions, as the record will show.

Mr. CLAUGHTON: You have nothing to do with this witness now.

Mr. JOHNSON: I have the right to make any objection now, and have the right to put it upon the record.

Mr. CLAUGHTON: I have tried my best to get the witness to answer the questions.

Mr. JOHNSON: I say that his answers are full and complete, and that is the reason you object to them.

Mr. CLAUGHTON: That is an impertinent interference on your part. I am examining this witness in the performance of my professional duty.

Mr. JOHNSON: And I am here also in that capacity, and I want the court to know that I am here.

Mr. CLAUGHTON: When I ask you a question again, I request you to make an answer and not a speech.

Q. Are you prepared to say that before the assignment of the inspector cases was made to you by Mr. Cummings you placed in his hands or called his attention in any way to this document about which I am now examining you, H. M. B. No. 3?

A. In my own mind I have no doubt I did so do.

Q. Do you recollect that you did so do?

A. I have no doubt that I did it. I do not remember.

Q. Do you recollect that you did so do?

A. I have no doubt of it.

Q. Do you recollect that you did so do?

A. I do not remember the day or the hour, but I have no doubt of it.

Q. Why have you no doubt of it?

A. Simply because it was in the natural order of things. I had nothing to conceal and attempted to conceal nothing.

Q. Mr. Baker, you have in your testimony distinctly sworn that you put this paper in his hands the next day, when you were about going from the city, and at that time he had the paper which, if he had had any judgment or discretion, would have given him the information in respect to these fees. Now, with this testimony before you, are you prepared to say that you have no doubt the paper was placed in his hands before the transaction was made?

A. I did not use the language of the question in my testimony, but I repeat my answer just given.

(And thereupon counsel for the complainant read from the testimony-in-chief of this witness on page 16 relative to the matter just inquired into.)

By Mr. CLAUGHTON:

Q. You will now observe from your testimony that you left it with him on the 7th, and from that paper, during your absence, he could have ascertained all about the amount of these claims that had been appropriated for at the time of the settlement. With your attention called to that testimony, are you prepared to say that this paper which you have testified you gave to him on the 7th had been submitted to him prior to that time?

A. I testify exactly as heretofore.

Q. Then you decline to answer that question?

A. I do not.

Q. Will you please answer it?

A. I have answered it.

Q. You will observe from your testimony that you left that with him on the 7th, and from that paper, during your absence, he could have ascertained all about the amount of these claims that had been appropriated for at the time of the settlement. With your attention called to that testimony, are you prepared to say that this paper which you have testified you gave him on the 7th had been submitted to him prior to that time?

A. I have no doubt of it. I stated in my testimony-in-chief the 7th, because that was a specific date upon which I knew that I had done a given thing, for the reasons and circumstances there given, and that it remained in his possession until such another given date for the reasons and circumstances there given, and that it was in his possession on the intermediate date for the reasons there given and from the entries on the paper itself.

Q. Have you any recollection that this paper was in his possession prior to these dates?

A. My remembrance is that I compared that paper with him from documents 70 and 225. That was not an unusual occurrence in the matters of the firm. That I did compare this identical paper with him I cannot swear definitely and positively, because it was so long ago, and as it was not an unusual occurrence I did not charge my mind with it and cannot tell you, but I have no doubt individually upon that subject.

Q. If this paper was handed to him or shown to him prior to the transaction—I mean the assignment—what necessity would there have been for you to hand him the printed documents with the checks which you say were upon them when handed to him?

A. He did not have that paper to take to his residence. I do not know whether it was in existence at the time he took the books and papers to his residence; but even had it been in existence and had it been given to him it would have been appropriate to have given

him the documents, that he might have checked that paper off with the documents.

Q. For what purpose?

A. To see that it was correctly done.

Q. The purpose of the documents with the checks upon it was to see which of these cases belong to Cummings & Baker?

A. Yes, sir; and also for the purpose of showing the cases in which Cummings & Baker had less than the ordinary fee.

Q. Do the printed documents show which of the Cummings & Baker cases had less than the ordinary fees?

A. Not without the marks, but with the marks it does.

Q. How do the marks affect that?

A. It is shown by blue pencil marks as I had it taken from the fee agreements.

Q. You mean to say that the blue pencil marks indicated the cases in which the fees were less than 25 per cent.?

A. Yes, sir.

Q. And that same information is in this paper?

A. It is, by calculation. I do not know whether it is marked on the margin or otherwise. I do not remember about that now. Of course a calculation would show.

Q. Sometimes it was marked on the paper?

A. Yes.

Q. Then this paper that you say that you handed to him on the 7th is really, in respect to the names and the amount of fees in each respective case, a mere copy of the books with the checks on the books?

A. It was intended to be.

Q. Is it?

A. I presume it is. So far as I know, it is.

Q. Is there anything else on it that is not on the book with these checks?

A. Nothing except the entries as to the date of the remittance, the amount of the remittance, the number of the check, the date of the check, and the additional sheets showing the amounts due to other attorneys.

Q. Then the public documents do not show the amount of the checks?

A. Yes; they show that amount of the checks, unless there is some mistake in printing. Otherwise the documents would show exactly the same as the amount of the checks.

Q. Then, if I understand you correctly, the only difference between these public documents and this paper is that this paper is an extract from the public documents as to the Cummings and Baker matters, while the public documents have other matters besides the Cummings & Baker cases?

A. Yes.

Q. That is all?

A. Yes.

Q. How long before the first entry on this paper was made was it prepared?

A. I could not tell you.

Q. Can you approximate it?

A. I always intended to have a paper similar to that prepared in readiness for the first issue of drafts. It may have been done the night before or it may have been done two or three days before. Ordinarily it was only a short time before.

Q. To what first issue do you allude?

A. The issue of the first draft by the Treasury Department in payment of the claims.

Q. You think it was prepared how long before that?

A. It might have been the day before or it might have been a week before. I do not know about that. It was ordinarily just before I expected the Treasury Department would issue some drafts in payment.

Q. Would you not naturally prepare such a paper very soon after Congress made the appropriation?

A. No; not necessarily.

Q. My question was ordinarily.

A. Ordinarily it would be done in season for the use for which it was intended and not much before.

Q. Do you remember at what time this appropriation was made?

A. The statutes will show. I do not remember the date.

Q. Now I will ask you a few questions about the conduct of these negotiations. You have testified that your acted fairly and squarely with Mr. Cummings in the matter of trade. Is that what you do testify to?

A. Yes, sir; I am willing to testify to that.

Q. Do you think you dealt as fairly with him as you would have don- with anybody else with whom you were making a trade?

A. Yes, sir.

Q. You intended to give him all of the facts from which an intelligent gentleman would be able to come to a conclusion as to whether or not the trade was to his advantage?

A. I intended he should have that, and think he did. He was not in ignorance on the subject.

Q. If I understand you correctly, you did not think it was incumbent upon you to give him any advice?

A. I declined to give him advice.

Q. You did not think it was incumbent upon you to do anything more than to place in his possession such facts as would give him the means of investigating and deciding upon his own judgment whether or not the assignment should be made?

A. That was what he had. He had everything, so far as I know, upon which I should have acted to have made the calculation, which I suppose he did.

Q. You regarded it as a matter of trade, in which it was the business of each man to look after his own interests?

A. Unquestionably; just as in every other trade.

Q. Do you know whether he ever received anything from the H. D. Cook matter?

A. I do not.

Q. He never reported to you that he had received anything?

A. He never did. I knew that he had funds belonging to the assigned bank, but whether he ever devoted any of them to his own uses I do not know.

Q. In reference to this document marked H. M. B. No. 7, is this one of the papers that you handed to Mr. Cummings to advise him of the condition of the business?

A. Yes; but I think possibly these blank sheets have been *have been* put on this as a kind of a cover to this paper.

Q. What does that paper show?

A. This paper shows the name of the client and, in general, the period for which arrears of salary were claimed for the client. For instance, here is the first name, Harry J. Ashmore, Burlington, New Jersey, from August 1st, 1875, to November 30, 1875. Burlington, N. J., represented his place of service, and the dates represented the period of the service for which the claim was made.

Q. Does that show how much was due to him?

A. No; this does not. His salary, ordinarily, was taken from the Treasury Registers, and the difference between that salary and the legal salary, as specified in the statutes, would be the amount due.

Q. Then, in order to make this paper of any assistance to Mr. Cummings, it would be necessary for him to search the Treasury records?

A. No, sir; I said the Treasury Registers.

Q. That is a record, is it not?

A. It is a public document, the same as the Blue Book.

Q. You may change it to Treasury Register and then answer the question.

A. It was one of the links necessary to complete the computation.

Q. Had you in your possession anything that supplied that link?

A. I had not, unless a case had been adjudicated, as shown in documents 70 and 225.

Q. Then all of these cases in document H. M. B. No. 7 that had been adjudicated are reported in printed documents as adjudicated cases?

A. Yes; from time to time.

Q. Only a portion of the names in printed documents 70 and 225 will be found in Exhibit No. 7. For the plaintiff to have been advised what was due to these various claimants he would have had to make a search somewhere else to ascertain those facts?

A. If I had been intending to make a proper computation I should have checked off the names in document- No. 70 and No. 225 so far as contained in them; then the other cases would require a computation for the purpose of ascertaining the difference between the amount it was shown by the Treasury Register they received and $3 a day, to which they were entitled.

Q. And in respect to those cases you had no other information than these pepers and these documents give?

A. Those were all the records I had.

Q. You had no other information?

A. No, sir; no other information.

Q. Your familiarity with the cases did not give you any additional information?

A. No, sir; they were filed in that way. When they were passing the accounting officer I then went over the figures in the case as they were made in the departments and verified each case as it was being passed, and if the allowance was not made for the whole time, or if it was made at different rates from those that I thought it should be made for, I made an investigation in the case as it went along. In that way, with a few exceptions, the amounts found due by the accounting-officers of the Treasury were accurate and correct and satisfactory to myself as attorney.

Q. Can you look at this paper handed to him on the 7th day of September, and from your examination of that can you tell what amount has already been appropriated for and the fees belonging to Cummings and Baker in those cases?

A. Not from paper No. 7 alone, but from paper No. 7 and documents No. 70 and 225 and the Treasury Registers and fee agreements, a list of which was given to him, of the cases where, so far as my examination showed, the fees were less than 25 per cent.——

Q. I am talking about this paper only.

A. From these papers it could easily be done.

Q. Please look at Exhibit H. M. B. No. 3. You have testified, I believe, that from this paper, by adding up certain columns, he could have advised himself as to exactly the amount of the claims that had already been appropriated for on the 6th day of September, 1886?

A. I see they are added up here. They are my figures, and I presume they are right.

Q. Are those your figures?

A. I think they are my figures.

Q. What do they add up?

A. One page foots up $2,351.46; another, $6,342.16; another, $5,325.65; another, $7,570.79; another, $5,594.78, and another $5,792.67.

Q. What do they aggregate?

A. $32,977.51.

Q. Can you tell from that statement how much was due to other attorneys?

A. These sheets show.

Q. I want you, Mr. Baker, if you can, to state it, and I want to get it in the record from your testimony.

A. I cannot give it in any way except from this sheet—$1,488.81.

Q. That left due, then, to Cummings and Baker how much?

A. $31,488.70; but that does not cover any of the other expenses of the firm, which were large in a great many directions.

Q. I am talking about the fees now.

A. After the trade the expenses relating to these cases were paid by myself individually.

Q. It now appears from this paper that $31,488.70 was the amount of the fees. What proportion of that had already been collected by you?

A. When?
Q. At the time of the trade.
A. I do not know.
Q. Is there any way by which you can ascertain that?
A. The receipts would show by there dates.
Q. What had not been collected by you were in the shape of issued drafts, ready to be delivered upon the presentation of the power of attorney, as I understand it. Is that so?
A. That is so.

Call is here made upon the defendant for a list of fees collected by him on the partnership account for and during the twelve months prior to the dissolution other than the inspector cases, which he claimes were entirely has own.

Call is also here made upon the defendant to file a schedule of cases in his hands at the time of the dissolution of the partnership with the complainant or in which said defendant had an interest secured or acquired during said partnership, the nature and condition of each of said cases, where filed, when, the amount claimed, the amount allowed, the fees contracted for or charged in such cases.

By Mr. CLAUGHTON:

Q. I understand that you claim, Mr. Baker, that you had entire charge of these inspector cases and did all the work in them?
A. No, sir; I have never claimed it.
Q. State exactly what you do claim in that respect.
A. I claim that the inspector cases were discovered by myself, and that I explained them to the complainant; that we proceeded with them jointly until 1886, and he received one-half of the fees in full up to that time. During that time the greater portion of the work was done by myself, but he assisted me from time to time, largely in manual ways, when we had duplicate copies of letters, &c., to prepare, and sometimes in filling up blank powers of attorney and preparing papers from copies which I had given him, frequently on a typewriter, and generally in looking after them altogether during my absence from the city, and sufficient at all times to keep him entirely posted not only with the nature of the cases, but the mode of settlement and the general practice in connection with them.
Q. Then you do not claim that you did most of the work in respect of those cases?
A. I said that I did claim that I did most of the work.
Q. Will you please state whether or not, as a matter of fact, the general management of these claims was committed to you?
A. I do not know that anything was committed to anybody in the firm. As a matter of fact, I did generally *did* manage these cases.
Q. You had a more intimate knowledge in respect to them because you did generally manage them, I suppose?
A. Because I did the larger portion of the work.

HENRY M. BAKER.

Subscribed and sworn to before me this 27th day of Jan'y, 1892.
WM. HERBERT SMITH,
Examiner in Chancery.

The further taking of these depositions was thereupon adjourned until Tuesday, Jan. 10, 1893, at 1 o'clock p. m.

WASHINGTON, D. C., *Jan*, 10, 1892—1 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the complainant, Mr. Mackey and Mr. Claughton.

Present on behalf of the defendant, Mr. Johnson.

And thereupon, in response to call of counsel for the complainant made at the last session for certain papers, the defendant here produces, in response to said call, the fol-owing papers, which are offered in evidence and marked H. M. B. Nos. 8 and 9.

And thereupon the counsel for the defendant offered in evidence a press copy of a certain letter written in reply to Complainant's Exhibit "Thoughts in Mind," and also a written copy from said press copy, which said letters are marked Exhibits H. M. B. Nos. 10 and 11.

The introduction of the above-mentioned papers in evidence is objected to by counsel for the complainant as being incompetent, immaterial and irrevelant, and upon the ground that the defendant cannot make evidence for himself.

And thereupon the defendant, by *its* counsel, introduced in evidence a certain letter bearing date August 13, 1889, addressed H. S. Cummings, Esq., and the same is filed herewith, marked Exhibit H. M. B. No. 12.

The introduction of the above-mentioned paper in evidence is objected to by counsel for the complainants as being incompetent, immaterial and irrelevant, and upon the ground that the defendant cannot make evidence for himself.

And thereupon the defendant announced *its* testimony closed.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } Equity. No. 12263.

Be it remembered that at an examination of witnesses begun and held, pursuant to agreement, January 16, 1893, to take testimony in rebuttal on the part of the complainant in the above-entitled cause, at which said examination there were present Franklin H. Mackey and H. O. Claughton, Esqrs., solicitors for complainant, and J. J. Johnson, Esq., solicitor for defendant, personally appeared before me, J. Arthur Lynham, an examiner in chancery of said court, the within-named witnesses, who, being called for and on behalf of the complainant and being first duly sworn according to law to tell the truth, the whole truth, and nothing but the truth touching the matter at issue in the above-entitled cause, did depose and say what is hereinafter set out as stated by them.

WASHINGTON, D. C., *January* 16, 1893,
Monday, at 3 o'clock p. m.

Met, pursuant to agreement of counsel, to take testimony in rebuttal on the part of the complainant in the above-entitled cause.

Present: Franklin H. Mackey and H. O. Claughton, Esqrs., solicitors for complainant, and J. J. Johnson, Esq., solicitor for the defendant.

Whereupon HORACE S. CUMMINGS, having been heretofore duly sworn, was called to testify in rebuttal.

Direct examination.

By Mr. CLAUGHTON:

Q. Mr. Cummings, please state whether, within the performance of your duty as a member of the firm of Cummings & Baker, a particular department of business was in your charge.

Mr. JOHNSON: Objected to because, if evidence at all, it should have been given in chief and not in rebuttal, and, secondly, because I think he has already testified to it.

A. There was.

Q. Now state what were the departments of business that were in your charge.

Q. When Mr. Baker came into business connection with me I had established a business on what is known as "war claims." That was the class of business to which I intended to confine myself mostly. When Mr. Baker came in with me and after he came in with me I still pursued the same course, and I may say that I had always exclusive charge of the war-claims business. Afterwards business that arose in those same departments in which the war claims arose would come in, and I would still take charge of them. Afterwards other business came in that I took charge of.

Q. Please state in what departments you did prosecute the business of the firm.

A. In the Quartermaster General's office, in the War Department, and in the Navy Department.

Q. Did the business of the firm require the prosecution of matters before the Attorney General's department?

A. It did.

Q. Please state who ordinarily represented the firm in that class of business.

A. I always did in the cases that went before the Attorney General that arose out of these claims.

Q. Did they have any business before the Land Department?

A. I did.

Q. Did the firm have?

A. It did.

Q. Who generally prosecuted those cases?

A. I did exclusively as far as I know.

Q. Did they have any cases before the State Department?

A. We did, and, as far as I know, I had the exclusive control of them.

Q. There was filed during the cross-examination of Mr. Baker a paper purporting to be the brief used by him in the Bee Bee case before the Supreme Court of the United States. Have you seen that brief?

A. I have.

Q. Can you state who prepared it?

A. I will state that in the whole conduct of that case from its incipiency the work before the departments, which consisted of two arguments before the Land Office, two before the Secretary of the Interior, and two before the Attorney General, was all done by me. When the case came before the Supreme Court of the United States I prepared the brief fully and alone, and that brief I attached Mr. Baker's name to. I had it printed. When Mr. Baker came to look over it he thought there should be some additions made to the brief. He then took and interpolated, if I may so say, about a page and a half or two pages at the latter end of the brief, but the rest of the brief, as far as I know, never had an alteration nor an amendment any more than from what it was when I prepared it.

Mr. JOHNSON: The question and answer are both objected to because it is manifestly nothing in rebuttal.

Q. You say he prepared a page and a half. How did he prepare it—in manuscript, in typewriting, or how?

A. That I could not say, but it was prepared, and I took it down to the printer and it was inserted.

Q. You mean to say that it was added to the already printed brief?

A. It was added, probably, a page or two from the end—inserted rather than added.

Q. So that his matter was in whole and your matter was in whole?

Mr. JOHNSON: Question objected to as leading and suggestive.

A. It was.

Q. In the conduct of the business before the Court of Claims, which member of the firm prosecuted that business?

A. Mr. Baker prosecuted his case and I attended to my cases. I will say, in regard to the Court of Claims business, that as early as the summer of 1873 that I filed cases Nos. 7189, 7190, 7191, 7192, and 7193, which I prosecuted and prepared every paper; no one else had anything to do with it, and I got judgment on four of them in May, 1874——

Mr. JOHNSON: This answer is objected to because it was before the firm commenced business.

A. (Continuing:) And the fifth one was thrown out on account of the statute of limitations. I will further say that I have made up petitions—entered cases in the Court of Claims—at least two to

every one that Mr. Baker had there, and I think I am safe in saying seven to every one that he ever put in.

Q. You heard Mr. Baker's testimony in respect to the Executive Document- No. 70 — 225. Can you tell when you first saw these books?

WITNESS: Do you mean those identical books?

Mr. CLAUGHTON: Yes, with those check-marks.

A. I don't know that I ever saw them until I saw them at Mr. Smith's office, when they were offered in evidence.

Q. Did you ever have in your possession, prior to the assignment which you made on the 6th of September, those books or copies of them with those pencil check-marks upon them?

A. I never did.

Q. You also heard Mr. Baker's testimony in respect to the paper H. M. B. No. 3?

A. Yes, sir.

Q. Have you any definite recollection as to the first time you ever saw that paper?

A. I never saw it until Mr. Baker handed it to me on the morning of the 7th of May (September)* or the night of the 6th, prior to his going away.

Q. Do you mean to say that you have a definite recollection of what you have answered in answer to my question?

A. I have a most positive recollection about it. I have no doubt about it.

Q. Mr. Baker in his testimony states that that paper being in your hands on or after the 7th of September, that you could have very easily found out whether or not you had sold your interest for less than its value. What have you to say in respect to not getting this information which that paper would have afforded you?

A. When Mr. Baker handed me that paper and called my attention to the fact that all had not been collected, and that quite a number of payments were still to be made, I simply put it in my desk; I paid no attention to it, because I considered the trade was made. I had nothing to do with it, but I simply took that paper, and when a power of attorney would come in with power to cash the draft I would make the proper entry, but it never came into my head that there was anything wrong about it; I considered that I had sold out to Mr. Baker for a fair consideration. I had no idea at the time that I was being paid less than one-half of the fees then due; in other words, I had no idea that I was being paid with my own money.

Q. Reference has been made to the suggestion of unfairness in respect to this assignment which was written in the paper "Thoughts in Mind." What have you to say in respect to that?

Mr. JOHNSON: This question is objected to because it is evidence-in-chief, if it is anything at all, and the idea of the witness about it is also objected to as manifestly incompetent.

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* In pencil in copy.

A. I am not going to give ideas, but simply facts. My whole idea as to whether I had made a poor trade or not had nothing to do with the amount of fees received in 1886, but solely and entirely on account of the future business that would come in; when Mr. Baker had told me that there was only $75,000 or $80,000 more of cases, out of which there would be a possible $20,000 of fees, I did not know whether that was correct or not and, as I said, I could not tell, but time alone would tell.

Q. Well, just in that connection, what did time tell?

A. Time told or proved that in two years—about two years—from that time that Mr. Baker had collected more than three times the amount of cases that he told me there was, and an investigation shows that he had much more than $80,000 of cases on file prior to the time of the assignment, under powers of attorney and contract, in which I had an equal interest; that those cases amounted to more than three times the amount that he told me. These cases were identical with the cases that had been paid; there was no new question of law or of fact to be settled.

Mr. JOHNSON: These questions and answers are objected to as manifestly not in rebuttal in any sense and, as I say, if testimony at all, it is testimony-in-chief.

Q. How much money had been collected and drafts issued for at the time of this trade?

Mr. JOHNSON: Objected to because he has already gone fully and at large into that question and the documents will show it, and that it clearly is not rebuttal.

A. I would say about $145,000 had been issued in drafts and about $92,000 had been called in cases up to that date.

Q. What was the amount of fees, then, that had been collected or that drafts had been issued for?

A. I would say about $35,000 or $36,000.

Q. What was the amount of fees, then, that had been collected or that drafts had been issued for?

A. About $36,000 collected in fees or due on drafts issued.

Q. How much of what was due to Baker & Cummings after paying other attorneys?

A. I should say about $34,000.

Q. Why do you say about $34,000?

A. Because I have no absolutely correct knowledge.

Q. In the testimony given by Mr. Baker at our last meeting he testifies that there was $31,488.70. How much of that belonged to you?

A. One-half.

Q. How much is one-half?

A. $15,744.35.

Q. When did you first know that that amount of fees first belonged to you already collected on the drafts issued for it?

A. I first knew that late in the fall of 1888.

Mr. JOHNSON: The answer and question are objected to as evidence-in-chief, and certainly he has so testified.

Q. Something has been said in the testimony of Mr. Baker in respect to your anticipated fees in the H. D. Cook matter being involved in that transaction. Please state whether they were or not.

A. The prospective fee in the H. D. Cook matter never played any part in this trade for the reason that Mr. Baker time and time again told me, "Well, you will never get anything out of that case," but when the trade was made Mr. Baker said, "Of course I shall claim nothing of whatever you may obtain in the H. D. Cook case."

Q. Well, had you at the time of that trade made anything out of the H. D. Cook case?

A. Not one dollar, but, on the other hand, the estate was heavily indebted to me.

Q. Did you ever make anything out of this matter?

A. I never did.

Mr. JOHNSON: I object to it because it is immaterial whether the witness made anything out of it or not.

Q. Mr. Baker also testified that he repeatedly objected to your not attending to the business of the firm as it was your duty to do. Please state whether or not any such objection or criticisms were made.

A. I never heard him make any objections about the manner in which I conducted my part of the business. Mr. Baker urged on me on two occasions to try my hand to obtain some French spoliation cases and to obtain some Alabama claims. I did so. I visited Salem and Newburyport and Portsmouth, but I found that the cases had already been gathered by others before. I made some effort in some of the other cases, and I found that all there was left were the remnants of the Alabama cases that were left over from the first Alabama commission or the first tribunal, and, as a rule, they were in the hands of the prior attorneys. But I will say that I brought in some pretty good claims of the Alabama cases; for instance, those that came from New Orleans from Judge Whittaker, who was my associate prior to Mr. Baker's coming in with me, and also some from Mr. Fogg, of New York, who was a personal friend of my own.

Q. Now, come back again to the H. D. Cook matter. I wish you to say when the transaction was made—the transaction of the assignment of your interest in the inspector cases—that he said he would claim nothing on what might be made out of the H. D. Cook matter. What do you mean by "when the transaction was made"?

A. I think it was subsequent, but it formed no element in my estimation and formed no element in Mr. Baker's estimation, according to his own declaration at the time, that he did not believe that anything would come out of it.

Q. Your contract was in writing, was it not?

A. Yes, sir.

Q. Has it been filed in this case?
A. It has.

Cross-examination.

By Mr. JOHNSON:

Q. Mr. Cimmings, when were you admitted to the bar of the Court of Claims?
A. In, I think, June or July. It might possibly have been August, but I think in July, 1873.
Q. How long after you formed this copartnership with Mr. Baker?
A. Long before.
Q. The cases that you have mentioned that you filed in the Court of Claims were the cases filed before you went into this copartnership with Mr. Baker?
A. Those that I mentioned were filed before. I will say, also, that I filed about twenty other cases before Mr. Baker entered into partnership with me.
Q. Will you give the names of those cases?
A. I cannot.
Q. Why?
A. Simply because it is so many years ago.
Q. Have you got a docket of those cases?
A. I have not.
Q. Did you ever keep a docket?
A. I did not.
Q. Did you enter your appearance in the Court of Claims in every case you filed?
A. In the first five, I did. In a large number of cases I did not, because I verified the petitions, and another attorney was connected with me, inasmuch as he had gained the Tice cases, and he put me on the track of those cases.
Q. Then your name does not appear as being attorney?
A. It appears as attorney-in-fact, but not as counsel.
Q. As the party who brought suit—the attorney-in-fact?
A. Yes; I signed the petition as attorney-in-fact.
Q. Did you ever divide any of the fees in those cases with Mr. Baker?
A. I did not.
Q. Now, when and what cases did you have before the Navy Department?
A. I had the case of the steamer Mozart, in which there was a $500 fee paid, and Mr. Baker got one-half. I had the case of Bossha & Stebbins, in which the fee was about $2,000, of which Mr. Baker received one-half. I had the Lewis case, in which the fee was about $2,000, and of which Mr. Baker got one-half. I had the Japan trading case, a case in which the fee was $500, and of which Mr. Baker got one-half.
Q. Is that all?

A. I have other cases, but I cannot remember them, for it has been so many years ago.

Mr. CLAUGHTON: Can you get a list and file them?

A. Not unless I went up to the department and hunted around.

By Mr. JOHNSON:

Q. You say you attended to those cases?

A. I did exclusively and entirely and alone.

Q. Did you consult Mr. Baker about them?

A. No, sir; because it was not a class of cases with which he was conversant.

Q. How was it he was entitled to half the fee, then?

A. He knew of it at the time, I presume, inasmuch as I made printed briefs.

Q. In other words, you didn't tell him that you had such cases?

A. I did.

Q. What did you talk about?

A. When any new case came in I would tell him about it. There never was a case that I knew of in the office but that he knew of it.

Q. How did you divide these fees with him, by check or pay him in money?

A. Sometimes in check and sometimes in money.

Q. Will you look up your checks for the checks you have testified you made him?

A. I cannot do that, because the bank is extinct and the checks are destroyed.

Q. How often did you destroy your checks upon the bank you kept your deposits in?

A. I never kept any checks after the settlement was made unless it was a very recent one.

Q. Well, how often did you tear up your checks that you had been given for fees in these various cases—how short a time after the settlement was made?

A. I can't tell. I have no rule for destroying checks.

Q. But you do destroy all your bank checks very soon after settlement is made?

A. I certainly do.

Q. What cases did you have in the War Department?

A. A great many cases. The bulk on my business lay in that department.

Q. Did you keep a list of these?

A. I did not.

Q. Can you tell how much money you realized from those cases in the War Department?

A. I should say about $50,000.

Q. Did Mr. Baker get one-half?

A. He did.

Q. What years were those?

A. All the way from 1876 down.

Q. And you mean to say that every check you paid him has been destroyed?

A. I did not pay him by checks except at a few times. We would have a settlement, perhaps, once or twice a year, and he would give a schedule of what he collected and I gave a schedule of what I collected.

Q. In case you didn't settle each case when the draft was made to you at the department, what would become of it?

A. I held what money I collected and he held what money he collected. In 1877 I collected about $28,000 of fees and, I think, Mr. Baker collected somewheres about $12,000 or $14,000; it may have been a little more. When we came to settle it, there was a balance due him by me and I paid it. If my recollection is right, I gave him a check for six or seven thousand dollars.

Q. Have you ever given him any checks that are not now in existence?

A. I think so—in fact, I know it. I don't suppose I have a check over two years old.

Q. What have you done with your bank book of the bank where you made deposits and drew these checks upon?

A. I don't know where they are.

Q. Are they destroyed also?

A. I don't imagine they are, but where they are I don't know; but the bank books don't show who the payee of the check was.

Q. No; but it shows the amount of the check and the date it was made. Don't you know that the bank book would show the date of the check and the amount?

A. Certainly.

Q. Now, what cases did you have before the Attorney General?

A. I made two arguments—one before Mr. Devins, Attorney General, and one before Mr. Brewster—each on the Little Rock or the Bebe case, so called. I also appeared before the Attorney General on the question of appropriation (a very important case to me) to pay certain war claims in 1877.

Q. What was the result of your argument before the Attorney General in the Bebe case?

A. The result was that the Attorney General agreed with me entirely, and he wrote a letter to the district attorney at Little Rock ordering him to commence suit in the name of the United States to set aside the then present title to the land involved in the case.

Q. Do you mean to be understood that Gen. Devins agreed with you?

A. No, sir; he did not. He simply took no action whatever.

Q. Didn't General Devins reject that case a few days before he went out of office?

A. He wrote a letter, but whether it was a rejection or a postponement I cannot say.

Q. Did you not take interest enough in the case to know whether Gen. Devins had rejected it or postponed it?

A. I did at the time.

Q. But you cannot now tell?

A. My impression is that it was rejected.

Q. Well, then, there was no fee out of that case?

A. No, sir.

Q. That was a case which you claimed was your own case?

A. Yes, sir.

Q. Is that the case that went to the Supreme Court of the United States?

A. It did.

Q. Why didn't you argue it there?

A. Because I told Mr. Baker that I thought neither he nor I were able to handle that case, and my wish and advice was to obtain other counsel to argue that case, and Mr. Baker refused to listen to that proposition, and he argued it himself.

Q. Why didn't you employ somebody?

A. Simply because Mr. Baker thought we had better not.

Q. Was it not your case exclusively?

A. Yes, sir; the same as the inspector cases were Mr. Baker's—that is, he had the control of them.

Q. Why didn't you argue that case yourself?

A. Simply because I did not think I was competent to; neither did I think Mr. Baker was competent.

Q. You had the case originally and managed it up to that time, didn't you?

A. Yes.

Q. Didn't it occur to you early in the argument of the case that you were not competent?

A. Six months before the time of argument I talked with Mr. Baker about the matter.

Q. Were you governed by Mr. Baker in all things as to how the case should be tried and who should try it and as to whether you should employ counsel?

A. I was in a great degree, for the reason that Mr. Baker was a man who claimed to have knowledge of court practice, and it was his ambition, as I thought, to excel in court practice, but I never courted it nor wanted it.

Q. Did Mr. Baker suggest to you to employ Mr. J. B. Edmunds to argue that case?

A. I can't say whether he did or not, but if he did Mr. Edmunds refused, because I asked him if he would not, and he said no; he was out of practice and he did not wish to appear before the Supreme Court.

Q. Now, these are the only two cases you argued before the Attorney General that you mentioned?

A. Yes, sir; the only two cases. I had much other business, but only two cases.

Q. Business for the firm?

A. Yes, sir.

Q. What was the other business before the Attorney General, for the firm?

A. There would be letters of inquiry for different persons want-

ing to know about the standing of this case or that case and other information and things of that kind.

Q. That was a matter that — clerk could attend to, couldn't he?

A. Certainly he could.

Q. Now, what was the business that you had before the Alabama court of claims?

A. I had no business before the Alabama court of claims except to turn over the cases into the office through my association to Mr. Baker to prosecute.

Q. You didn't appear in that court in any capacity?

A. No, sir; in no shape or form.

Q. Did you conduct the correspondence with Whittaker, of New Orleans, with reference to the cases that he sent you?

A. I did of a certain class, but all the Alabama cases which came to our office through Mr. Whittaker Mr. Baker attended to. He attended to that case. He liked the court practice.

Q. What cases did you attend to in reference to the French spoliation claims? What did you do in that regard and where did you go?

A. I never went before the French Spoliation Commission.

Q. Did you go before the Court of Claims in any of the French spoliation cases?

A. I never did.

Q. Now, have you testified to every case in which you took personal part individually?

A. I presume not.

Q. Now, Mr. Cummings, I want to know all you did individually and solely without the aid and assistance of Mr. Baker.

A. I don't know that Mr. Baker ever offered or gave any assistance in any case in my charge.

Q. That is not the question. My question is what you did and not what Mr. Baker did.

A. I simply did all the business except the answering of some letters of inquiry when I would be absent from town.

Q. Then you have testified to all the business—the part that you have taken in all the business of the firm?

WITNESS: I do not understand your question.

Q. Then you have testified very fully of everything that you have done in connection with the business of the firm?

A. No, sir.

Q. Just tell us, then, what else you did do.

A. I cannot tell at this late day of all the cases that we had any more than he can tell of cases that ran through fifteen years of business he has.

Q. Mr. Cummings, you have stated that Exhibit H. M. B. No. 3, in answer to a question by Mr. Claughton, was in your possession, and that you paid no attention to it and put it aside. You did not take enough interest in it to go over it and see what it was?

A. The transaction was closed, as I supposed.

Q. Well, you had that paper and other papers and these bank checks and bank book in your possession how long?

A. Well, I think from about the morning of the 7th of Septembe 1886, to about the first of October, 1886.

Q. And you put this paper away and did not pay any attentio to it, did not treat it with any degree of importance, that it woul carry any information on the subject at all, did you not?

A. I did.

Q. When did you first look at that paper?

A. I first looked at the paper near or probably the same day, o the next day, or at the day it was that the first letter came in con taining a power of attorney to indorse the draft.

Q. Then you knew what the paper was, I suppose?

A. Yes, sir.

Q. Can you tell from your recollection what was the purpose o the paper?

A. I can only tell now because I have seen it. I think now i was the usual paper that Mr. Baker prepared, and I would say tha whenever the House of Representatives passed the appropriatio bill providing for the payment of these claims and it became ce tain in our idea that the appropriation would be made, Mr. Bake would sit down and make up these schedules, and those schedule were generally made by the time the bill became a law.

Q. It was just such a paper that, under all the circumstances, yo could have made yourself, couldn't you, if one had to be made?

A. Why, certainly.

Q. Now tell us, if you please, why it was that with that paper an with the blank checks in your possession signed by him and wit the bank book in your possession and the checks in your possessio for his purchases from you of your interest in these claims of fiftee thousand dollars—why it was that you sat down and wrote what i called you- thoughts and meditations with all this information i your possession and not calling his attention to what you though was a misrepresentation of things.

A. Simply because the idea that he had misrepresented th amount of fees in the cases, say in 1886, never came into my min but I did have some doubts, if I may so call it that, about the num ber of cases that would come in hereafter. My doubt was as to th future cases. He said eighty thousand, and I thought that perhap there ought to be more, but Mr. Baker knew all about it; I kne nothing.

Q. But you had, as I understand you, every fact in your posse sion at the time you penned your thoughts and meditations?

A. No, sir; I did not.

Q. Well, how long after the sixth of September was it after yo wrote these thoughts and meditations?

A. Within a few days.

Q. Then you did have in your possession the evidence that yo have testified to, to wit, Exhibit H. M. B. No. 3 and the congre sional documents, the checks by Mr. Baker, signed in blank, an the check for fifteen thousand dollars for the purchase of your i terest at the time?

A. I did.

Q. Then I want to know why it was that when Mr. Baker came in you did not at once speak to him about this transaction as being unfair?

A. Simply because there was no idea in my mind of any unfairness as regards the fees of 1886, and in regard to the prospective cases I took Mr. Baker's word, and time would only develop as to whether he was right or whether he was wrong.

Q. Well, why was it that you could entertain such thoughts and put them upon paper three days after you had made this sale to him, with all the evidence that went to make up this sale in your possession, and not call his attention to any misgiving when you first saw him?

A. All that I had in my possession at the time or had seen at the time was simply the schedule of cases that had been paid or were being paid and Mr. Baker's check book.

Mr. JOHNSON: That does not answer my question. The examiner will please read it.

Q. (Question re-read.)

A. Simply because I did not have all the evidence that went to make up this sale; I only had the evidence of the amount of claims that were being paid in 1886, but I had no evidence whatever of the claims *in futuro*.

Q. But you had a misgiving, or otherwise you would not have reduced it to writing.

A. That does not follow at all.

Q. Would you reduce thoughts to writing that you knew had no foundation in fact, touching the integrity of your partner?

A. I would, for the very reason that I had fears that the cases *in futuro* were more than Mr. Baker had represented.

Q. Then, having reduced those fears and suppositions to writing three days after the consummation of the sale, and with all the evidence that advised you at the time as to the condition of the cases which you sold, why was it, while you saw Mr. Baker again, you didn't tell him of the misgiving that you had in that transaction, but waited for three years before you divulged the fact to him?

A. Simply because my fears had nothing to do with the case; they were then being paid or had been paid, but as to the amount of future business, and that Mr. Baker had stated at a certain amount, for I had asked him. When he came home he would have given me the same answer, and time would only tell by the decision and payment of these cases as to whether he was right or wrong.

Q. Why did you wait three years before you opened this subject to him?

A. Because I had no facts to go on prior to that time.

Q. Haven't you testified that you obtained this information at the next appropriation by Congress?

A. No, sir; I did not.

Q. Haven't you testified that you obtained the facts that led you to believe that everything was not fair in 1888?

A. Yes, sir; late in the fall of 1888.

Q. Why didn't you then speak to him about it the moment you ascertained the facts which gave grounds to your suppositions in your thoughts and meditations?

A. Simply because I wanted to see what the whole amount was, how many were coming in. As I recollect, the first appropriation, in the spring of 1888, was somewheres about seventy-five thousand dollars, and my first impression was—well, Baker was pretty near right. He said seventy-five to eighty thousand and he struck it pretty near right. In a few months another appropriation was made, and then I thought, well, this exceeds what Baker said. Then came another appropriation, along in October, 1888, for much more, and then it was that my suspicions began to be aroused.

Q. I want to know—you gathered together all these facts, which, you say, finally warranted you in what you asserted in your paper, and waited for a lapse of time, which the statute of limitations would bar, before you spoke to him about it?

A. I did not wait any great length of time after I had discovered the real standing of these cases.

Q. But you knew enough long before the period of three years to have warranted you in speaking to Mr. Baker about this transaction?

A. I did not know enough.

Q. What did you know?

A. I know that I believed——

Q. (Interposing.) I object to your belief. I want you to state the fact.

A. I did not know enough.

Q. Then you knew at the time that you reduced to writing your thoughts and meditations that you had nothing—no fact—upon which you could say anything derogatory to the integrity of Mr. Baker?

A. No; I knew nothing, except that I thought he was mistaken in regard to the amount of future business.

Q. Why didn't you, then, when he returned home, call his attention to that fact?

A. Simply because he had given me his opinion, and he knew more about it than I did, and I could see no use in carrying on a conversation. It would have been nothing but a repetition of what had been said already.

Q. But you had the facts before you and you could have cleared it yourself, couldn't you?

Mr. MACKEY: I object to counsel arguing with the witness.

A. No, sir; I could not.

Q. You have testified that all these appropriations were made in October, 1888. Why did not you speak to him then immediately upon this appropriation being made?

A. Simply because I was waiting to find out the whole truth.

Q. Then you were waiting for the statute of limitations to bar the whole transaction?

A. I was not, sir; I kept that pretty well in view.

Q. But you knew enough about 1888 to satisfy you that there was something radically wrong in the sale which you had made?

Mr. MACKEY: If these questions are directed to the purpose of showing that the three years' statute of limitations is a bar in this case, I object to the questions as entirely irrelevant, as it is our contention, and we propose to show, that the statute has no application to this case whatever.

A. In the latter part of the year 1888 I came to the conclusion or to the impression, rather, that Mr. Baker was very much mistaken as to the amount of future business as dating from the trade of 1886.

Q. As that involved your interest in the purchase by Mr. Baker of September 6, 1886, and as you say it was quite an interest, why didn't you call Mr. Baker's attention to it then—that he was mistaken in what he had said, and that you desired it to be corrected?

A. Simply because I knew that there was plenty of time.

Q. Then you were willing to lull Mr. Baker along in the belief that the transaction that he had made with you was a *bona fide*, honest, and square transaction?

A. I was not willing to lull him or to persuade him or to impress him with any different belief from the facts at the time; in other words, I never until after the commencement of this suit learned the full status of the case, but I had the belief in Mr. Baker's integrity that if there was anything wrong that he would right it.

Q. Well, why did not you call his attention to it if it was wrong?

A. Simply because, as I have said, that there was plenty of time and I wanted to see what these cases all amounted to. Where I supposed there was only $80,000 of cases there was nearly $240,000, as I recollect, cases paid in 1888 alone. I did not know but that there would be more cases paid at the very next Congress, and there was some paid at that session.

Q. Then, Mr. Cummings, you were waiting to see whether or not you had made a good deal with Mr. Baker?

A. I don't know, because the very first appropriation showed that Mr. Baker had gotten the best of the deal.

Q. Then, if that showed it, you were in possession of that fact at the time you wrote your thoughts and meditations?

A. I was not.

Q. Then you were in possession of it in October, 1888.

A. In October, 1888, I knew that Mr. Baker had collected far more fees than he had represented to me.

Q. Then I desire, and I wish you would be explicit about it, so that the court may see what was your motive in not calling Mr. Baker's attention to that monstrous outrage when you found it out—why you waited so long.

A. Simply because I had not found out the fullness of it.

Q. You have found it out now, have you?

A. No, sir.

Q. How much diligence did you exercise in finding out whether he had treated you unfair in this transaction?

A. Well, I began by taking the executive documents and marking against each one the name that was familiar to me; I then went to the Secretary of the Treasury, Mr. Windom, and I asked Mr. Windom for an order on the first comptroller for a list of the inspector cases that had been paid to Mr. Baker from the 1st of January, 1888, until the 1st of January, 1889; that list Mr. Windom ordered to be furnished to me.

Q. Was that before or after you filed this bill?

A. I think it was before.

Q. Haven't you testified in chief that it was after?

A. I could not say; I don't know the day when the bill was filed.

Q. Now, Mr. Cummings, I want to know, when you were so assiduously engaged in all these various cases you have mentioned, what was Mr. Baker doing?

A. Attending to his business, I suppose.

Q. What business had he?

A. You must ask him; I don't know.

Q. You don't know what business he had outside of these inspector cases, do you?

A. No, sir; and the cases before the Alabama commission.

Q. Then, he attended to all the cases before the Alabama commission?

A. Yes, sir; as I have testified.

Q. Did he not attend to all the business before the Court of Claims in which the firm was interested?

A. I don't know of any case in which they were interested, because the two cases—that is, the inspector case, the test cases of the inspectors, and one where he was the counsel in the moiety case.

Q. Those were the only two, then, before the Court of Claims?

A. Yes, sir; all that I know of.

Q. Then, whatever cases were managed in behalf of the firm in the Court of Claims was done by Mr. Baker?

A. Yes, sir; in his cases.

Q. Who attended to the firm cases, then?

A. I don't know whether there was any case filed by me in the Court of Claims, but I am inclined to think that there was.

Q. But when you say he attended to his cases before the Court of Claims, do you mean to say that they were his individual cases or the cases of the firm?

A. They were the cases of the firm.

Q. Why do you say they were his individual cases, then?

A. Simply because he took charge of a certain line of cases and I took charge of a certain line of cases.

Q. Well, then, neither of you knew what business the firm was doing, did you?

A. I think they did.

Q. Well, then, if he had exclusive jurisdiction of his branch and

you had exclusive jurisdiction of your branch, and neither consulted the other as to his separate branch, how did you make out whether anything was individual business or firm business?

A. Simply because I never had a case but that I told Mr. Baker about it, and he did the same with me.

Q. You testified, I believe, that you divided all the fees that you received in the Navy Department and War Department cases with Mr. Baker?

A. Yes, sir; and anywheres else that I know of.

Q. Did you make any effort to get any of the French spoliation claims?

A. I did.

Q. Can you state when?

A. I can't tell you the year or the day or the month.

Q. Was it your effort to get them on behalf of the firm or individually?

A. On behalf of the firm.

Q. Did you ever get any an le them in the Court of Claims?

A. I think I filed one.

Q. Mr. Cummings, didn't you say to Mr. Baker that if he would not press this matter of twenty-seven or twenty-eight hundred dollars, for which suit was afterwards brought at law, that you would call this whole matter square?

A. I did not.

Q. You are positive of that?

A. I am positive of it.

Q. Well, did you not use these words: That you would call it even with Mr. Baker, or words to that effect?

A. I did not.

Q. Said nothing at all to him on the subject?

A. I did.

Q. Well, what did you say to him?

A. I told Mr. Baker prior to his civil suit for several months—I told Mr. Baker that I was willing to leave this to the judgment of any good, honest man who was a lawyer, and he said he would not. I told Mr. Baker that for the sake of peace and harmony that I proposed to cut off here, then and now, and I would take whatever I could take, and he could go on and manage his business, and we would simply part; but I never at that time, within my knowledge or recollection, ever propose- to Mr. Baker any compromise on the dropping of his civil suit.

Mr. MACKEY: I want to note an objection to the testimony as to any statement made by either of the parties in any alleged effort to compromise this suit or this claim.

A. (Continuing:) Well, I was going to state, when Mr. Mackey interrupted me, that I was in hopes that this case could be amicably settled and Mr. Baker refused, and I told him directly and squarely that I withdrew any offers or any propositions or any intimations of any compromise in the case whatever.

Q. Mr. Cummings, have you any reason why you delayed bringing this suit—why you did not bring it sooner?

A. Simply because I didn't have the facts on which to bring it.

Q. You have testified, in answer to a question by Mr. Claughton, that after paying your clients and the outside attorneys there would be in round numbers about thirty-one thousand dollars, and over half of that was yours. Was that the net sum due you, after deducting the incidental expenses, for the purpose of getting that fund in the shape it was?

A. Our expense account was entirely separate and alone. We would fix up our janitor's bill, rent, gas, etc., but the firm did not have any account connected with the inspector cases. I mean to say the firm did not keep any account of the expenses touching these inspector cases. I will say that I do not know of any legitimate expense connected with the inspector cases outside of what was paid to other attorneys and the ordinary costs of printing, copying, postage, etc.

Q. Mr. Cummings, do you know anything at all as to the expense connected with those cases?

A. I only know what the practice had been in the prior collections, in similar cases.

Q. I am speaking about these cases.

A. I don't know that there is any other expense other than those. I simply never knew of them.

At this point an adjournment was taken until Wednesday, January 18, 1893, at 3 o'clock p. m.

WASHINGTON, D. C., *January* 18, 1893,
Wednesday, at 3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel for the respective parties.

Whereupon HORACE S. CUMMINGS was recalled and further cross-examined by Mr. Johnson.

Cross-examination:

Q. Mr. Cummings, you have stated the fees collected by you in 1877 in the cases you class as your branch of the firm business. How many cases did that include?

A. There were two principal cases, but there may have been one or more minor cases that I cannot recollect at this time.

Q. Was the Cosgrove & McCloskey case, already referred to by you in your testimony, one of these?

A. It was.

Q. State, if you please, what was the amount allowed in that case.

A. I cannot tell at present; something over forty thousand dollars. I know there was a twenty thousand and some odd dollars' fee.

Q. What was the percentage of the fee in that case?

A. Fifty per cent. There was no contract in that case whatever, but the man who engaged me paid me fifty per cent.

Q. Then how much did you realize as fees in dollars and cents?

A. I cannot tell, only I know there was some twenty thousand and some odd dollars.

Q. Are you able to say how much of that you deducted as expenses and how much net you divided with the defendant?

A. I know the net was twenty-odd thousand dollars.

Q. Are you able to say what you deducted for expenses?

A. I cannot. I know there was some expenses in New Orleans that I had to pay out on that matter.

Q. Well, Mr. Cummings, please state as near as you can what these expenses were and to whom you paid the amounts.

A. I cannot tell now; I do not remember. I know it was a long, complicated case. I know, among other things, that I had a man in New Orleans engaged in it to go or communicate with the War Department—with Hollabird, who was at the time issuing all the vouchers, the quartermaster at New Orleans—at the time the vouchers were issued.

Q. You are unable to say, then, how much you paid as expenses and to whom you paid it?

A. I cannot say now.

Q. Have you any data in your possession with which it would enable you to do so?

A. I have not. When the case was closed the case was closed.

Q. Well, was the steamer case for Mr. Flanagan, of Philadelphia, one of these cases?

A. It was.

Q. What were you allowed in that case?

A. I think it was $35,000.

Q. What percentage of that amount did you have as a fee?

A. I do not recollect, but the fee was something over $7,000.

Q. In dollars and cents?

A. Yes, sir.

Q. Well, how much did you deduct for expenses in that case?

A. Not one dollar, that I know of. If I have it has slipped my mind, but I do not recollect.

Q. How much of that fee did you divide with the defendant?

A. One-half. I divided the whole fee.

By Mr. CLAUGHTON: And he got one-half?

A. Yes, sir.

By Mr. JOHNSON:

Q. Do you recollect how you paid him—by check or money or otherwise?

A. No; I cannot tell. I know when we made the settlement Mr. Baker had a pretty large batch of the inspector cases and I had these cases. I know that Mr. Baker said that the fees he had taken in was a certain amount. What it is I cannot say. I know that I had—that my fees amounted to so much that I had collected, and

the difference I paid over to him. Whether it was in check or money I could not say.

Q. Is the testimony which you have given in the case that was named—does that apply to all the other cases that you have mentioned?

WITNESS: What do you mean?

Mr. JOHNSON: I mean for what expenses did you pay then in the cases which you testified to yesterday—in the cases of the War Department and the Attorney General?

A. I very rarely had to pay out any money, simply because if a man has a case clean and square and he did not have to scour over the country for evidence and pay a man to go here and go there—why, I did what there was to do.

Q. Was that the condition of all the cases you have testified to?

A. Pretty much, I think.

Q. Are you certain about it?

A. Yes, sir.

Q. How much did you collect, Mr. Cummings, as fees in the cases you class as yours in 1878?

A. Indeed I could not say.

Q. In 1879?

A. I could not say.

Q. In 1880?

A. I could not say.

Q. In 1881?

A. I could not say.

Q. In 1882?

A. I could not say.

Q. In 1883?

A. I cannot say.

Q. In 1884?

A. I could not say.

Q. In 1885?

A. I could not say.

Q. In 1886?

A. I could not say.

Q. In 1887?

A. I could not say.

Q. And in 1888?

A. I collected a fee in what was known as the Hoboken case, in which there was another interest besides ours, and that interest I paid over, and whatever there was left was the net fee.

Q. You don't know how much that was?

A. I don't recollect.

Q. How much in 1889?

A. Nothing.

Q. How much have you collected as fees in cases in possession before the dissolution of the partnership in 1889, since that date?

A. None.

Q. In your evidence-in-chief you say that after the decision of the Court of Claims in the inspector cases no question could be raised

or was raised by the department in regard to any of these cases. Is that so?

A. No question was ever raised that I knew of except the question of fact which went to prove the services or the character of the services of the claimant.

Q. As these cases, according to your testimony, are not yet fully paid, how do you know that the department did not and could not in 1886, 1887, 1888, and 1889, and subsequent years, raise any points of law or fact in those cases?

A. If they did, it never came to my knowledge.

Q. In other words, it is simply an opinion of yours then, is it?

A. Yes, sir; it is an opinion of mine gathered from what has been told me in the departments.

Q. You got the information, as you say, gathered in the departments, by reason of looking after them and seeking out all the information?

A. Yes, sir; from seeking the information.

Q. At the last session you referred to your collection of executive documents No. 70 — 225 in evidence. Did you generally get this soon after they were printed?

A. I did.

Q. Did you get No. 70 — 225 before the deficiency bill of 1886 became a law?

A. That I cannot say; but I think I had it in my possession probably before the appropriation bill passed.

Q. Now, Mr. Cummings, you have testified that you were admitted to the bar of the Court of Claims—when?

A. I said I presented cases to the Court of Claims, as I have already stated, several times in the summer of 1873. I had five cases put in my hands. I entered them in the court. I told the clerk of the court that I had not been admitted. It was then vacation and it became necessary for me to have some orders on the departments or some calls. He told me to go and see Judge Drake. He was then living on G street, in the western part of the city. I went to see Judge Drake, and I told him that I was a new practitioner; that the court was not in session, and that I wanted to present these cases, and Judge Drake said: "Well, Mr. Cummings, that is all right; I will grant you these calls." What he indorsed on the paper I do not know. He got them, and when he came down to court the next morning I put the papers in.

Q. Haven't you since the filing of this bill applied to the Chief Justice for the purpose of having your name placed upon the roll of the court?

A. I have, sir.

Q. When was that?

A. I could not tell.

Q. Did you apply to him in writing?

A. I did, sir.

Q. And do you know how the order reads?

A. I do not, sir. I took the oath. I know I went through and recited the circumstances.

Q. Was that last request of yours made to the judge in chambers or in open court?

A. In chambers. The court was not in session.

Redirect examination.

By Mr. MACKEY:

Q. Mr. Cummings, if there is any other matter or thing about which you wish to testify and have not been interrogated about, you may state it before you close this testimony?

A. Well, if you can suggest what you want to ask me, perhaps I can do a little better.

I have read over the testimony, and, in the first place, I want to explain or remove some misapprehension. First, in regard to the two cases known as the Coal case and the Baltic case. I said that those cases were in my possession and I was working on them prior to the partnership. Mr. Baker in his evidence, as I understand it, says that he examined the papers and he finds my papers dated after the partnership.

Mr. JOHNSON: This line of adding to his testimony or making corrections to it is objected to because it is argumentative, and I think his counsel are fully able to take care in court to see to the discrepancy between this complainant and defendant.

EXHIBIT H. S. C. No. 3.

Pittsburgh brewery.

Duquesne Way. Joshua Rhodes.

Brewer, malster, and dealer in hops.

PITTSBURGH, *Nov.* 12*th*, 1873.

Horace S. Cummings, Esq., P. O. box 467, Washington, D. C.

DEAR SIR: Your favors of the 8th & 11th insts. were duly rec'd and contents carefully noted. In reply I will give you a brief history of the case. In the first place, the whole of this coal was confiscated by Gen'l Butler when he took New Orleans. After a long trial he gave us back all the coal and we commenced retailing it, getting $2.25 per bbl. for it. We then sold the gas works at New Orleans either one or two boat-loads, for which we got the money. I forget whether we got $1.75 or $2 per bbl. for it. Then the Government got one or two boat-loads and gave us vouchers, which vouchers were subsequently paid. I have forgotten the number of barrels and the amount. I think it was a Gen'l Hurlburt who was quartermaster at New Orleans at the time, but cannot say positively, as the books are up at the works and all the papers are on file in Washington city. After this the quartermaster at New Orleans gave us regular vouchers for all the balance of the coal, but left the price blank. The reason we did not get the money on these vouchers was because the quartermaster said he did not have the money,

and also that we wanted too much for the coal, and so referred the matter to Washington. We took depositions and made proof of what coal was selling for, and also what the gas works paid us for part of this same lot. Gen'l Ekin has these vouchers and all the papers connected with the case on file in his office at Washington city. He gave us a receipt for them which is in possession of Judge Casey.

Yours truly, JOSHUS RHODES.

EXHIBIT H. S. C. No. 4.

N. J. Bigley's Railroad and River Coal Company; office, foot of Grant street, Brownville packet landing.

PITTSBURGH, *Sept. 3d*, 1873.

Mr. H. S. Cummings.

SIR: Your favor of 29th ult. just to hand & in reply would say that I sold coal to Capt. Turnley, A. Q. M., for Government in the spring of '62; also to Capt. Wise, for the Navy Department, for all of which I believe we have received payment in vouchers, which I believe have also been paid. I have just returned from Cape May, Saratoga, & Niagara, where I have been for some time. I have had no time to examine our books since I last saw you, but will do so in a few days.

Yours truly, N. J. BIGLEY.

Mr. MACKEY: Go on, Mr. Cummings.

A. The coal case was one of the first cases I ever had when I left the department. I began this case in August, 1873, when I was in Pittsburgh, and, as evidence of it, here is one of the letters dated at Pittsburgh, from Mr. Joshua Rhodes, dated November 12, 1873, in which he gives me a history of the case, and I have been at work on it ever since until its payment, and there is a letter dated September 3, 1873, from one of the largest coal dealers in Pittsburgh who had coal in the same situation as that claimed in this Cosgrove & McCloskey case; there is a letter from him. It is simply to show that I was at work on those cases and was long before Mr. Baker had any interest in the concern.

NOTE.—The said let-ers are offered in evidence and are filed, marked "Exhibits H. S. C. Nos. 3 and 4" respectively.

A. (Continuing:) In regard to the Baltic case, that case was filed in the department for ten years prior to my taking hold of it. Mr. Flanagan saw me early in the summer of 1874 and asked me to look into it. I went over to the department and did look into it. I found what seemed to be the trouble in the case. I found that that trouble had to be cured outside of the Treasury Department rather than in it, for opposed to the case came the Confederate title, namely, this vessel had been sold by the Confederate court in Louisiana by a decree of this Confederate court, and that was brought up against the case as being rebel property. I corresponded with the parties

in Louisiana and told them that it would be necessary, in order to win that case, to have the case opened in the courts at New Orleans, to have the decree set aside, and to throw the ownership of the property back into the hands of Mr. Flanagan. That was done. Those proceedings were long, and it was not until those proceedings were commenced in New Orleans that I took a very active interest in the case in the Treasury. That is simply to explain that I was at work on this case long before the partnership.

In regard, also, to the case that Mr. Baker refers to, in which he thought I was derelict in duty—the Franco-American case—I will say that that case came from Judge Whittaker, in New Orleans. That case was brought into the firm by means of my prior connection with Judge Whittaker before Mr. Baker entered the firm.

I wish, also, to say in regard to this list obtained from the Treasury—I will say this——

Mr. JOHNSON (interposing:) What list is that?

A. I mean the list that Mr. Johnson asked me when I obtained it.

Mr. JOHNSON: I object to this testimony upon the subject of the list. I asked the simple question, Did he obtain these lists before or after he filed the bill? Therefore I object to his undertaking to argue that question; the simple answer is yes or no.

A. I will say this: That I went over to the Treasury and examined the books of powers of attorney to indorse drafts. I made a lead-pencil list of the same. Knowing that that would not be evidence, I went to Mr. Windom and I told him that I wanted to have a list of these cases where drafts in the inspector cases were delivered to Mr. Baker between the first of January, 1888, and the first of January, 1889, and he referred me to the first comptroller, and the first comptroller came around and said that it would take a great deal of time. Mr. Windom said, "Here, if you are not in a hurry for it I can give it to you," and I said they could take all the time they wanted, and I think that there were some two months before I got the list, so in reality I had two lists—one obtained before and one obtained after.

Mr. CLAUGHTON:

Q. After and before what?

A. After and before the filing of the suit.

Mr. JOHNSON: This answer is objected to as hearsay and argumentative, and from all the reasoning that he seeks to place upon record he has not yet answered the question that he seeks to explain.

A. (Continuing:) I wish to say, in order to emphasize——

Mr. JOHNSON: I object to his argumentativeness. I respectfully request his counsel to direct his attention to what is evidence.

A. (Continuing:) I wish to say to emphasize my evidence in this: I have been asked why I didn't speak to Mr. Baker when I discovered or believed that I had been wronged or overreached.

Mr. JOHNSON: Mr. Examiner, I certainly object to the answer of the witness now in the shape of what he terms "correcting his testimony" and making an argument in respect to the questions I put to him.

A. (Continuing:) When the first appropriation was made, in 1888 (as no appropriations were made between 1886 and 1888), the appropriation was about $75,000, I said to myself, Mr. Baker is pretty near right. In a short time, or in the course of two or three months, another appropriation was made of a good size, but yet an appropriation of such a size that I said to myself, Well, Baker has done better than I thought, for it was an appropriation that brought the fees up to more than what I expected, but not to such an amount as I would kick upon it. In October, 1888, a still larger appropriation was made, somewheres in the vicinity of $110,000, and that surprised me. Immediately after that, or at least during the winter of 1888 and 1889, I went into the Treasury and, as I said I did, got a list of these cases where powers of attorney had been given to Mr. Baker. I took them off. I then took the executive documents, all of which took much time, and I would go over each executive document, and I made out another list, in which would be brought down the amounts, and I added these amounts up. It was not until probably along in the early part of the summer or late in the spring of 1889 that I was convinced.

By Mr. MACKEY: Did you employ any help?

A. I did employ help.

Q. You were going to say you were convinced of something.

A. I was convinced that I had been overreached, but not convinced to that degree that I could positively charge Mr. Baker with an intentional overreaching of me, and it was not until I had examined these cases, as I had no minutes to go by. I had to get the information from that source—from these executive documents—and finally I sent Mr. Baker a note and told him I wanted the powers of attorney prior to September 6, 1886. He sent them over. I put a man to work on these, and he made me an index to these cases, stating the name of the claimant, his residence, the date of the power of attorney, and the percentage. As I had to go through the whole matter, it was work for months before I could really make sure in my mind. That is what convinced me that I had been intentionally wronged.

Recross-examination.

By Mr. JOHNSON:

Q. Then, when you made up your mind that you had been intentionally wronged, it corresponded then precisely with your thoughts and meditations, did it not?

A. No, sir.

Q. What was the difference between what you suspected in your thoughts and meditations—what was the difference, in fact, in your mind as reduced to writing and the facts that you discovered in 1888?

A. The difference was the same that would be between a pea stand and a grocery store. My supposition was at least that claims might run over one hundred to one hundred and twenty-f thousand dollars instead of $75,000, but I had no idea until af the appropriation in October, 1888, that there was any su amount.

Q. Then the fact is simply this: As time wore along and y carried this sale in your mind you reached the conclusion that y had made a bad bargain and you desired Mr. Baker to make so remuneration for that purchase?

A. Well, I came to the conclusion after these appropriations h been made that I had been deceived terribly in the amount of fut business, and the only question that arose in my mind was, Did Baker know of this amount of future business at the time when made the sale?

Q. Mr. Cummings, do you deny that the powers of attorney a applications filed in the two cases referred to by you were dated stated by Mr. Baker in his evidence?

A. I do not think there was any power of attorney at all, as recollect; but in the Cosgrove & McCloskey case there might ha been, but there certainly was no contract, and there was a power attorney in the Flanagan case or Baltic case.

Mr. JOHNSON: Mr. Examiner, please repeat the question to t witness.

Q. (Question read by examiner to witness.)

A. I do not, because I don't know.

Q. When was the Franco-American court established, if y recollect?

A. I could not tell. Mr. Baker attended to that business.

Q. Are you able to say what information you asked for in t department before you filed your bill, and what information y asked for after you filed your bill?

A. The most of the information that I had prior to filing of t bill was that that I gathered myself by examining the books powers of attorney in the first comptroller's office. I don't know any other information that I received or asked for prior to fili the bill. Subsequently to filing the bill I asked, as I have said, the list, which has been filed, from the first comptroller's offi Afterwards I applied to the Secretary for a list of the drafts in settlement issued in the payment of inspector cases in 1886. Aft wards I asked for a list of claims filed by Mr. Baker on or bef September 6, 1886, in the inspector cases.

Q. Well, all the information that you requested to be furnis you at the department was all there was, was it not, before you fi your bill?

A. It must have been. I don't know anything about it.

Q. You could have ascertained by diligent inquiry, could y not?

A. I could have ascertained, and probably would, had I any i of the actual condition of facts.

HORACE S. CUMMINGS

Subscribed and sworn to before me this 14th day of March, A. D. 1893.

J. ARTHUR LYNHAM,
Examiner in Chancery.

Thereupon HARRY O. WILSON, a witness produced on the part of the complainant, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. CLAUGHTON:

Q. Mr. Wilson, what is your occupation?
A. I am book-keeper here for Corson & McCartney.
Q. Corson & McCartney are bankers?
A. Bankers and brokers; yes, sir.
Q. Did Mr. Baker have a deposit account here in September, 1886?

Mr. JOHNSON: Mr. Examiner, say that the question is objected to or any similar question enquiring into the private accounts of the defendant in any manner.

A. (Question not answered.)
Q. Do the books of your bank show whether or not Mr. Baker had a deposit account here in September, 1886?

Mr. JOHNSON: Question objected to because the issue of whether or not Mr. Baker had a bank account with this bank is not made by the issues of this case, and further objected to because it is improper to inquire into Mr. Baker's bank account with this bank or any other bank.

A. Yes, sir.
Q. Will you turn to that account and state what Mr. Baker's balance was on the morning of September 6, 1886?

Mr. JOHNSON: Objected to for the reasons before stated.

WITNESS (to examiner): Can I refuse to answer any of these questions?
Mr. CLAUGHTON: Well, the court will make you answer.
Mr. JOHNSON: I don't know whether he has to answer or not. He can refuse and submit to the court and take the opinion of the court on it.
Mr. CLAUGHTON (to witness): I will say that you have no option unless they object to your answering.
(To Mr. Johnson:) Do you object to the witness answering?
Mr. JOHNSON: I object to the witness answering the question for the reason that they have no right to inquire into Mr. Baker's private account under the issues as made in the pleadings in this cause.
Mr. CLAUGHTON (to witness): An objection being made by the counsel, it is entirely with you to say whether or not you will answer the question. If you decline to answer it the commis-

sioner will have to certify it to the court and get the court's opinion upon it as to whether or not it is your duty as a sworn witness to answer it.

WITNESS: Well, gentlemen, as a matter of fact, I cannot answer this question personally; I simply have to refer to the books.

Mr. CLAUGHTON: Well, we are talking about that. What do your books say, is the question.

Mr. JOHNSON: I object to his saying what the books say, and I further object to the books being referred to in this case as showing Mr. Baker's private account.

WITNESS: Well, this account stands on our books in Mr. Baker's bankers*
name, and as book-keeper acts in confidential relation with his clients, until I have some further authority for so doing I cannot answer the question.

Mr. CLAUGHTON: Have you been before called upon to give this information and to answer these questions?

Mr. JOHNSON: By whom?

Mr. CLAUGHTON: By Mr. Cummings' attorney and the examiner. The examiner is here now.

Mr. JOHNSON: I object to it because up to the present time no authority is shown why the witness has been called to testify at all, and the mere request of the examiner, we all know, would not place a witness in the position to testify.

A. Yes, sir; I have.

Q. Why didn't you answer?

WITNESS: When?

Mr. CLAUGHTON: When you were called upon last Monday evening.

A. I was not called on last Monday evening to testify to that.

Q. Were you asked to be a witness last Monday evening?

A. I think I was; yes, sir.

Q. Did you become a witness?

A. No, sir.

Q. Why not?

A. Because there was no occasion for it. Nobody asked me any questions.

Mr. MACKEY: Did you have a conversation with Mr. Baker just about that time?

Mr. JOHNSON: This mode of examination is objected to, Mr. Examiner, as being entirely irrelevant and immaterial and productive of nothing except the prolongation of time.

A. No, sir.

Q. Do you remember whether or not Mr. Cummings' attorney and Mr. Baker's attorney and Mr. Baker were over here Monday evening?

A. Yes, sir.

[*In pencil in copy.]

Mr. JOHNSON: Objected to as immaterial and cutting no figure in the merits of this case.

Q. You say they were over here?
A. Yes, sir.
Mr. CLAUGHTON: Now, will you state as succinctly as possible why they were over here and what transpired on that occasion?

Mr. JOHNSON: Objected to for the same reason.

A. Well, I came over here to get these books, and I got the book and put it out on the desk. I was asked to state Mr. Baker's balance at that time, and Mr. Baker objected to it.
Mr. MACKEY: What language did he use?

Mr. JOHNSON: I object to that.

A. He said I had no business to give his personal account to any one except himself, or words to that effect; that was the substance of it; that he had not had any business with these gentlemen or Mr. Cummings for three years or over and did not intend to have any more.
Q. As a consequence of that, what did you do?

Mr. JOHNSON: I object for the same reason.

A. I refused to tell Mr. Baker's balance.

By Mr. JOHNSON:

Q. Did you receive a subpœna to testify on that day?
A. No, sir.

By Mr. CLAUGHTON:

Q. You have now?
A. Yes, sir; got it this morning.

NOTE.—The counsel for the complainant here requests the examiner to certify to the court for its decision the following question, which was asked the witness and which he refused to give answer to, viz:

By Mr. CLAUGHTON:

Q. Will you turn to that account and state what Mr. Baker's balance was on the morning of September 6th, 1886?

Which is accordingly done this 21st day of January, A. D. 1893.

J. ARTHUR LYNHAM,
Examiner in Chancery.

TUESDAY, *February* 14, 1893, at 3 o'clock p. m.

Met pursuant to agreement.

Present: Franklin H. Mackey, Esq., of solicitors for complainant, and J. J. Johnson, Esq., solicitor for defendant.

Whereupon HARRY O. WILSON, having been heretofore duly sworn, was recalled and further interrogated as follows:

NOTE.—The witness having refused to answer the following question, which was put to him by counsel for complainant at the former session, and the same having been referred to the court by the examiner, at the request of counsel, for its decision thereon, and the court having on this 14th day of February, 1893, decided that the answer should be taken, the question is again put by—

Mr. MACKEY:

Q. Will you turn to that account and state what Mr. Baker's balance was on the morning of September 6, 1886?

A. $14,803.74.

Q. Is that the morning of September 6?

A. That was at the close of business.

Q. What was there on the morning of September 6?

A. $12,162.21.

Cross-examination.

By Mr. JOHNSON:

Q. That amount, then, was really the deposit on the 4th?

A. It was.

Q. The amount you testified that was there on the morning of the 6th, $12,162.21, was at Mr. Baker's credit at the end of the 4th—at the close of business on the 4th?

A. Yes, sir.

Q. No business being conducted on the 5th?

A. No, sir.

Q. Fifth of what?

A. Fifth of September.

Q. Of what day of the week?

A. I don't know, sir.

Q. Did Mr. Cummings or either of his attorneys speak to you in regard to Mr. Baker's account with Corson and Macartney before the subpœna was issued for you?

Mr. MACKEY: The question is objected to as being immaterial and irrelevant.

A. Yes, sir; they did.

Q. Which one?

A. Mr. Cummings.

Q. What did Mr. Cummings say to you?

A. Well, I don't remember exactly what it was. I did not pay very much attention to it. I think he came in, though, and wanted to know what Mr. Baker's balance was.

Q. What did you tell him?
A. I gave him these balances.
Q. How did you come to give him these balances upon his request?
A. Well, he represented to me that he was interested in this account with Mr. Baker jointly; that the account was in his name before and Mr. Baker was jointly interested in that, and it was afterwards transferred and put in the name of Mr. Baker.

Mr. MACKEY: This line of cross-examination is objected to as immaterial and irrelevant.

Q. Then it was upon the representation alone made to you by Mr. Cummings that you stated to him the account?
A. Well, no, taking into consideration the business that Mr. Baker and Mr. Cummings had done here.
Q. Did Mr. Cummings have anything to do with this particular account?
A. That I don't remember.
Q. Didn't Mr. Cummings have an individual account here at that time?
A. I think he did.
Q. Didn't he have an individual account here at the time he applied to you for the information concerning Mr. Baker's account?
A. Yes, sir.
Q. Then it was upon the representations and reliance that you placed in the truth of what Mr. Cummings said to induce you to exhibit Mr. Baker's private account to him, was it?
A. Yes, sir; exactly.

Mr. MACKEY: That question is objected to as a misstatement of fact, as we conceive it. We deny that that was Mr. Baker's private account. It was an account, kept in Mr. Baker's name, of partnership funds.
Mr. JOHNSON: Mr. Mackey's argument, I must submit, is out of place here. He can make that argument upon the evidence when he gets before the judge, but not to make such an argument to the witness.

Q. Can you recollect the first time that Mr. Cummings applied to you to look at Mr. Baker's account?
A. Well, no, sir, I can't, because he got the figures from Mr. Corson, and he said that Mr. Corson knew that that was a joint account.
Q. Do your books show that it was a joint account or an individual account?
A. It shows that it is in the name of Mr. Henry M. Baker.
Q. Alone?
A. Yes, sir.
Q. And not in the name of anybody else?
A. No, sir.
Q. Did either member of the firm—Mr. Corson or Mr. Macart-

ney—ever authorize you to give Mr. Cummings the information that you were asked for touching Mr. Baker's account?

A. No, sir.

Q. Did Mr. Cummings ever present to you or to the firm, as far as you know, any written or other authority from Mr. Baker to permit Mr. Cummings to look at this account?

A. No, sir; not that I remember.

Mr. MACKEY: This is plainly irrelevant.

Q. Did the firm, as far as you know, ever receive the consent of Mr. Baker that his account should be exhibited to Mr. Cummings?

A. I don't know, sir.

Q. Did you ever receive any permission from Mr. Baker to exhibit it?

A. No, sir; not that I remember.

Q. Did you keep the account and are the entries in the book that you read from in your handwriting?

A. Well, I think the one on the fourth is in mine, but on the 6th it is in the handwriting of Mr. Corson.

Q. How much money was deposited to Mr. Baker's credit in that account from September 7th to October 1st, 1886, both inclusive?

WITNESS: That would not take in the 6th, of course. Do you want October 1 included?

Mr. JOHNSON: Yes, sir.

A. $17,976.57, I make it.

Q. Will that account show whether or not any check for $15,000 was presented either on the 6th of September or any other day down to and including the 29th of September, 1886?

Mr. MACKEY: Objected to as not responsive to anything called out by the examination-in-chief, and also if it is directed to showing that the check for $15,000 given by Mr. Baker to Mr. Cummings was not presented at the bank, and attention of counsel is called to the fact that Mr. Cummings had stated himself that he did not present the $15,000 check, but divided the amount up into three checks of $5,000 each.

A. Well, the account won't show that it was presented.

Q. Does your account show that $15,000 was paid out on the 6th of September, 1886, or at any day from the 6th down to and including the 29th of September, 1886?

WITNESS: Any one particular check for $15,000?

Mr. JOHNSON: Yes, sir.

A. No, sir.

Q. Will you state the balance of Mr. Baker's account on the 9th of September, 1886, if you please?

Mr. MACKEY: Objected to as irrelevant and not responsive to anything called out in the examination-in-chief.

A. $2,077.82.

Q. Now, what was the balance on the 15th of September, 1886, if you please?

A. $37,098.53.

Q. Now, the same for September 29, 1886, if you please?

A. $719.84.

Q. Now, will you please state, Mr. Wilson, what was the total of Mr. Baker's deposits at the close of business on October 1st, 1886?

WITNESS: Including October 1?

Mr. JOHNSON: Yes, sir; from August 30, 1886, to October 1, 1886.

A. $114,971.03.

Q. When Mr. Cummings prevailed upon you to let him inquire into the account of Mr. Baker, did you give him a statement of any figures from the account?

A. I don't think I did.

Q. Did Mr. Cummings see you more than once in reference to Mr. Baker's account?

Mr. MACKEY: This line of cross-examination is all objected to for the reasons heretofore stated. They are not responsive to the examination-in-chief.

A. I don't think he did; I don't remember.

Q. Mr. Wilson, the testimony in this case shows that Mr. Baker gave Mr. Cummings a check for $15,000, dated the 6th day of September, 1886. Now, state from your knowledge of the state of Mr. Baker's account at that time if that check had been presented at your bank on that or the next day would that check have been paid, in your opinion?

Mr. MACKEY: That question is objected to as irrelevant and responsive to nothing brought out in the examination-in-chief, and also because it calls upon the witness for an expression of an opinion on his part as to what would or would not have been done under a given state of facts.

A. Well, I think I will wait for further authority before I answer that question.

Mr. JOHNSON: What lights do you want?

WITNESS: It is simply an opinion of mine, you know.

Mr. JOHNSON: That is all I am asking you for.

A. Well, yes; I think it would.

Q. What are your duties here in the bank?

A. Well, I keep the books and generally attend to the business of the firm.

Q. Paying teller?

A. Yes, sir.

Q. And receiving teller?

A. Yes, sir; not particularly in any one of those capacities, though.

Q. You are not specially designated, but you do them all?

A. Yes, sir; sign checks and drafts and things of that sort.

Q. Does that account of Mr. Baker show in the ledger, or any book which you have, that it ever was a partnership account between Mr. Cummings and Mr. Baker?

A. Well, it don't show in any book except as it shows here in the name of Henry M. Baker.

Q. Then there is no reference, then, to lead any one to suspect even that it was even a partnership account—from the appearance of it in the book?

A. No; it would look like Mr. Baker's personal account, unless there was some verbal understanding.

Q. I want to know if there is anything in the ledger which you have before you, and with the account of Mr. Baker before you, to show that that account was transferred from a partnership account of Cummings and Baker?

A. No, sir.

Q. Then all the knowledge that you had in reference to its being transferred from a partnership account to Mr. Baker's individual account was the statement made by Mr. Cummings to you?

A. Yes, sir.

Redirect examination.

By Mr. MACKEY:

Q. Mr. Wilson, you were asked if there was any business done on September 5th by the bank. Do you mean by your answer to infer that the bank did no business on that day, or——

A. (Interposing.) No, sir; there was nothing in this account that day.

Q. That is to say, there was nothing in the way of deposits made or checks cashed on that day?

A. This account don't show it.

Q. All you know is that this account shows that no deposit was made to the credit of Mr. Baker and no checks paid?

A. Yes, sir.

Q. You have stated that in your opinion that Mr. Baker's check for $15,000 would have been paid had it been presented?

A. Yes, sir; I think it would on Mr. Baker's credit.

Q. Without reference to the state of his account?

A. Of course if there was a few thousand dollars' difference we would probably have notified him; but if it was a nominal difference we would have paid it.

Q. That is to say, if there had been a thousand dollars difference between Mr. Baker's account and the amount of the check, you would, on Mr. Baker's credit, have paid the check, would you not?

A. Well, I don't think we would hardly have done that without finding out from Mr. Baker something about the check.

Q. Well, if it had been presented by Mr. Cummings—you knew Mr. Cummings to be Mr. Baker's partner?

A. Mr. Cummings said he was Mr. Baker's partner.

Q. You knew that it was the firm of Cummings and Baker?

A. I did on the representation of Mr. Cummings—yes.

Q. You were in the bank at that time, were you, in 1886?

A. I was here on September 6, 1886, but prior to that time for two weeks I was away.

Q. You had been employed by this bank for some time prior to that?

A. Yes, sir.

Q. And you knew both Mr. Cummings and Mr. Baker personally, did you not?

A. Yes, sir.

Q. You knew they were or claimed to be partners, did you not?

A. Yes, sir.

Q. And the fact that Mr. Baker's partner had presented a check for $15,000 would have played some part in determining your action as to whether or not you would have paid it?

A. Yes, sir. I think we would have paid either of those gentlemen money if they had overdrawn to a reasonable amount.

Q. But to a stranger you would have done differently?

A. Yes, sir.

Q. You were asked as to your occupation here, and it was attempted, or a seeming attempt was made, to show that you were cashier, receiving teller, and paying teller, and occupied a number of other positions.

A. No, sir; there is no such office here as cashier or anything of that sort. There is no regular paying teller or receiving teller. I am here as an employee of the firm and act for them.

HARRY O. WILSON.

Subscribed and sworn to before me this 14th day of March, 1893.

J. ARTHUR LYNHAM,
Examiner in Chancery.

Mr. Mackey, of solicitors for complainant, here announces the testimony in rebuttal on the part of the complainant closed.

J. ARTHUR LYNHAM,
Examiner in Chancery.

I certify that the foregoing depositions (comprising 60 typewritten pages) were taken down by me in shorthand as an examiner in chancery from the statements when and as uttered by the deponents thereof; that the same were thereafter transcribed and reduced by me into print and thereupon read and subscribed by the respective deponents in my presence.

I further certify that my fee of $37.75 for taking, certifying, and returning said depositions has been paid to me by the complainant.

And I further certify that I am not of counsel nor in anywise interested in this case.

J. ARTHUR LYNHAM,
Examiner in Chancery.

Surrebuttal Testimony.

Counsel for the defendant thereupon offered in evidence a letter dated October 5, 1889, from H. S. Cummings to H. M. Baker.

Counsel for the complainant objected to the introduction of said letter in evidence because said letter is not responsive to anything

brought out in the testimony in rebuttal and because the same, if relevant at all, should have been offered by the defendant at the proper time.

Counsel for the complainant also objected to the said letter as being irrelevant and immaterial to any issue in this cause, and shows upon its face an effort upon the part of the writer, the complainant herein, to compromise the case, and for that reason alone, if for no other, it is inadmissible.

Said letter is in the words and figures following, to wit:

Horace S. Cummings, counsellor-at-law, Washington, D. C., No. 1411 F street N. W.

Oct. 5, '89.

A. M. Baker.

Dear Sir: Mackey met me and asked me some questions, as coming from you, about my idea of the status of the last time cases and insurance cases which had been adjudicated but not appropriated for. I will say that I consider that you have an equal interest in them as myself, and if I collect them I am legally bound to account to you for the fees which may come to me in the absence of any agreement otherwise—that is, legal and law.

I consider you have an equal interest in the Huestis case and *and* "State of Maine" case, if no agreement to the contrary is reached.

I believe the insurance cases will be paid this session if we can believe anything of the promises of the Republican members who are likely to be chairman of the Appropriation Committee-. Mackey also asked about some case which I had once but dropped, and Vail was in it. I presume you mean the Tunstall case. That case I had presented and dropped before we had any firm relations. Even before you left the Treasury I believed the case rotten; Cooper was att'y; afterwards in it, but Parish worked him out.

I told Cooper what I had heard about the case, and Cooper said, I can make Parish pay your case in court, and I said, Go ahead. He afterwards asked me if I would give a stipulation to dismiss the suit I had against Parish if he, Parish, would pay the principal. I said yes and gave the stipulation. Cooper paid me $450 in about 30 days and the balance about 8 or 10 months after. How he got it I do not know, only that I gave him 50 per cent., and I never had any fee in the case — Tunstall whatever.

Mackey says you think any charge of one per cent. of claims exorbitant in the power of att'y matter. You say it took about 3 half hours. You are mistaken. It was a week before I could make an impression on him. You know how he put me off; how I took a big bundle of letters over to him to show the relations with our clients; how I went to Fairchild, refused but finally agreed to leave it to Maynard; how I went to Maynard's house. I made the cases my cases, as I honestly believed they were. One per cent. too much? Why? Why, I was offered ½ of a good fee to get a man's drafts for him that very year, and I tried it and Maynard refused it, when he said it was another attorney's case, and said what he had done was for personal reasons and not as a matter of business. Three times I

pleaded for you. How much did it cost you to get your fees in those cases where the drafts got away from you? Didn't it cost far more than one per cent. of the claim? Took but little time, did it? The value of services depends on the results and not on hours; ⅔ of what you collected subsequently to '86 was on powers and contracts gotten prior to that time. All you did was to write a simply letter of renewal of claim, back it up with the stereotyped affidavit of which I wrote scores, and the work was done. Was your service any the less valuable when you took a $500 fee for a few minutes' work?

In order to be sure, I have stated a hypothetical case like the present one of draft matters to some half dozen practicing attorneys before the departments, and not one set- as low a fee as I did.

You would not have done it so cheap if a stranger or client had asked you to do the job.

Baker, I have made you a fair, honorable proposition, for I am not going to have any blame attached to my side.

Yours truly, H. S. CUMMINGS.

P. S.—I had an inquiry short time ago about Medical Lake lands. I simply said they were not for sale. Was I right?

DISTRICT OF COLUMBIA, *ss:*

I, William Herbert Smith, an examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the foregoing depositions were taken down by me in shorthand at the time and place mentioned in the caption thereof from the oral statements of said witnesses, which said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that said depositions were thereupon read over by said witnesses and subscribed to by them in my presence.

I further certify that I am not of counsel in said cause or otherwise interested in the result of said suit.

WILLIAM HERBERT SMITH,
Examiner in Chancery.

Fees, 60.00, paid by def't.
WM. HERBERT SMITH.

EXHIBIT H. M. B. No. 1.

49TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. No. 70.

LIST OF CLAIMS ALLOWED BY ACCOUNTING OFFICERS OF THE TREASURY.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

Schedules of claims allowed by the accounting officers, appropriations for which have been exhausted, or carried to the surplus fund.

FEBRUARY 12, 1886.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT, *February* 10, 1886.

SIR: I have the honor to transmit herewith, in compliance with section 2 of the act of July 7, 1884 (23 Stat., p. 254), schedules of claims allowed by the several accounting officers of the Treasury Department under appropriations the balances of which have been exhausted, or carried to the surplus fund under the provisions of section 5 of the act of June 20, 1874 (18 Stat., p. 110), amounting to $1,426,675.36.

Respectfully, yours,

D. MANNING,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

CLAIMS ALLOWED BY ACCOUNTING OFFICERS.

Reported by the First Auditor and Commissioner of Customs, &c.—Continued.

No. of certificate of claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	TREASURY *Treasury* DEPARTMENT—Cont'd.			
	Claims—Continued.			
94807	Asa Larned	Expenses of collecting the revenue from customs prior to July 1, 1883.	1879–1881	$315 50
*a94807	Selden A. Jones	do	1877–1878	309 50
*a94807	Frank Granger	do	1876	78 00
*a94807	Lawrence T. Remer	do	1876	63 00
*a94807	H. S. Ballentine	do	1881	161 47
*a94807	Stephen H. Avery	do	1879–1880	197 73
*a94807	W. A. Woodward	do	1876–1878	474 03
*a94807	James Bills	do	1876–1877	261 00
*a94807	J. M. Jenks	do	1875, 1876	413 71
*a94807	Bela W. Jenks	do	1875, 1876	432 00
*a94807	Herbert C. Sanborn†	do	1879–1881	337 16
*a94766	S. B. Dickerson	do	1875, 1876	104 00
*a94766	Ezra S. Hamilton	do	1875–1880	1,253 80
*a94766	Benj D. Gifford	do	1880, 1881	896 52
*a94766	Vinal F. Hatch	do	1878, 1881	2,379 23
*a94766	S. S. Baker	do	1880–1881	421 45
*a94766	Simeon Atwood	do	1880–1881	492 42
*a947.6	James Gifford	do	1880, 1881	279 50
				15,473 85
	Total			18,791 93

[* Check-mark in copy.] [† Check-mark in blue in copy.]

a Difference between amount paid and legal compensation fixed by sections 2733 and 2738, Revised Statutes.

Recapitulation of Claims Allowed by the First Auditor and Commissioner of Customs.

Collecting revenue from customs prior to July 1, 1883	$15,473 85
Debentures or drawbacks, bounties or allowances prior to July 1, 1883	236 42
Repayment to importers excess of deposits prior to July 1, 1883	39
Expenses of revenue-cutter service, 1883 and prior years	29 10
Life-saving Service, 1883 and prior years	17 95
Supplies of light-houses, 1883 and prior years	5 31
Repairs an- incidental expenses of light-houses, 1883 and prior years	2 55
Expenses of bouyage, 1883 and prior years	1,785 60
Repairs and preservation of public buildings, 1883 and prior years	205 21
Heating apparatus for public buildings, 1884	967 80
Heating apparatus for public buildings, 1883 and prior years	58 20
Furniture and repairs of same for public buildings, 1883 and prior years	9 55
Total	$18,791 93

Reported by the First Auditor and Commissioner of Customs under Section 2, Act July 7, 1884 (23 Stat., p. 254).

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	TREASURY DEPARTMENT.			
	Claims.			
*a*17626	Samuel I. Pope & Co	Heating apparatus for public buildings, 1884.	1884	$881 25
*b*18186	C. W. Meikel & Co	do	1884	3 75
*b*18712	Linning & Jackson	do	1884	82 80
				967 80
*c*17725	Central Pacific R. R. Co	Heating apparatus for public buildings, 1883 and prior years.	1875	8 40
*d*17137	Eagle machine works, of Indianapolis, Ind.	do	1883	49 80
				58 20
*e*10904	Henry W. Hoffman, late collector of customs.	Debentures or drawbacks, bounties or allowances, prior to July 1, 1883.	1866	236 42
*e*13633	do	Repayment to importers excess of deposits, prior to July 1, 1883.	1866	39
*e*24168	do	Expenses of buoyage, 1883 and prior years.	1866	1,785 60
*f*91882	H. Greeley Knowles	Repairs and incidental expenses of light-houses, 1881 and prior years.	1881	2 55
*f*18438	Inter-Ocean Publishing Company	Supplies of light-houses, 1883 and prior years.	1883	5 31
*g*18039	George H. Hall	Life-saving Service, 1883 and prior years.	1874–1882	8 73
*h*18878	J. W. Etheridge	do	1882, 1883	9 26
				17 99
*i*18044	Steamtug Water Witch	Expenses of the revenue-cutter service, 1883 and prior years.	1883	25 00
*j*18076	Nicholas J. Kearney	do	1879	4 10
				29 10
*d*18075	John Lang & Co	Repairs and preservation of public buildings, 1883 and prior years.	1881–1883	116 25
*k*18187	C. F. Scott	do	1882, 1883	62 31
*b*18715	William M. Winchester	do	1881, 1882	26 60
				205 21
*b*18275	C. W. Meikel & Co	Furniture and repairs of same for public buildings, 1883 and prior years.	1883	9 50
*d*18075	John Lang & Co	Expenses of collecting the revenue from customs prior to July 1, 1883.	1881–1883	14 50
*l*18780	Edward Ludecke	do	1882, 1883	162 00
* *m*92207	William Williams	do	1878–1881	2,019 90
* *m*94807	David D. O'Dell	do	1876–1881	3,444 10
* *m*94807	John M. Robertson	do	1880, 1881	557 10
* *m*948?7	John T. Howard	do	1881	64 30
* *m*94807	Joseph Davis	do	1881	64 30
* *m*94807	E. S. Petit	do	1878–1881	277 50

[* Check-mark in copy.]

a Work and material.
b Repairs.
c Storage.
d Material and labor.
e To be applied to balances due from him, involving no expenditure of money from the Treasury.
f Advertising.
g Use and occupation of land.
h Freight.
i Towing.
j Traveling expenses.
k Telephone.
l Salary as watchman, Alaska.
m Difference between amount paid and legal compensation fixed by sections 2733 and 2738, Revised Statutes.

Summary of Claims.

State Department:	
Foreign intercourse	$1,537 47
Treasury Department:	
Internal revenue	44,819 18
Customs	18,791 93
Miscellaneous	3,631 69
	67,242 80
War Department:	
Second Auditor's accounts, army	460,798 06
Third Auditor's accounts, army	283,976 65
	744,774 71
Navy Department:	
Naval Observatory	499 80
Fourth Auditor's accounts, navy	183,270 99
	183,770 79
Interior Department:	
Civil	136 44
Public lands	51,812 21
Indians	25,941 74
Pensions	62 36
	77,952 75
Post Office Department:	
Postal service	324,411 85
Department of Justice:	
Judicial expenses	26,984 99
Total	1,426,675 36

EXHIBIT H. M. B. No. 2.

49TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. No. 225.

SUPPLEMENTAL LIST OF CLAIMS ALLOWED BY THE ACCOUNTING OFFICERS OF THE TREASURY.

LETTER

FROM THE

ACTING SECRETARY OF THE TREASURY,

TRANSMITTING,

In compliance with a resolution of the House of Representatives, supplemental lists of claims allowed under appropriations which are exhausted or the balances carried to the surplus fund.

MAY 8, 1886.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT, *May* 6, 1886.

SIR: In compliance with a resolution of the House of Representatives of April 15, 1886—

That the Secretary of the Treasury be requested to transmit to the House a schedule of all claims allowed by the accounting officers of the Treasury under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of section 5 of the act approved June 20, 1874, since the allowance of those embraced in House Ex. Doc. No. 70—

I have the honor to transmit herewith lists of the claims referred to, amounting to $700,197.18.

Respectfully yours, C. S. FAIRCHILD,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Reported by the First Auditor and Commissioner of Customs, under Section 2, Act July 7, 1884 (23 Stat., p. 254).

No. of certificate or claim.	Name of claimant	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	TREASURY DEPARTMENT.			
	Claims.			
a94826	Frank Gross	Lighting and buoying of the Mississippi, Missouri, and Ohio rivers, 1883 and prior years.	1883	$15 25
b19344	Northern Pacific R. R. Co	Marine Hospital Service, prior to July 1, 1883.	1883	46
c18924	Otto Andreas	Expenses of collecting the revenue from customs, prior to July 1, 1883.	1878, 1879	60 83
d19231	E. T. Bayard	do	1882	3 26
* e94903	J. A. Riopelle	do	1876, 1881	5,452 36
* e94903	Chas. E. Bury	do	1879, 1881	392 50
* e94903	Benjamin Balger	do	1877, 1881	3,672 67
* e94903	Frank Hesse	do	1879, 1881	732 03
* e94903	David E. Johnson	do	1878, 1879, 1881	1,849 61
* e94903	John Wood	do	1879, 1881	1,645 36
* e94903	Rudolph Kern	do	1879, 1881	346 30
* e94903	John S. Smith	do	1879, 1881	1,461 00
* e94903	Daniel Cole	do	1879, 1881	675 04
* e94903	J. B. Hinchman	do	1879, 1881	362 70
* e94903	William L. Damon	do	1880, 1881	183 50
* e94903	George King	do	1879, 1881	674 64
* e94903	John E. Nellis	do	1880, 1881	927 77
* e94903	Wilber Howard	do	1880, 1881	183 50
* e94903	Orson B. Curtis	do	1880, 1881	160 50
* e94903	Joseph H. Riggs	do	1875	53 00
* e94903	Louis Cirotte	do	1876, 1881	5,452 36
* e94903	C. R. Dannals	do	1879, 1881	132 90
* e94903	R. W. Beach	do	1879, 1881	300 55
* e94903	David E. Morgan	do	1879, 1881	363 30
* e94903	Otis Bradford	do	1879, 1881	392 50
* e94903	D. Milo Heath	do	1879, 1881	1,461 00
* e94903	Virgil W. McGraw	do	1879, 1881	392 50
* e94903	Lyman Stiles	do	1877, 1879	1,710 00
* e94903	Archibald Campan	do	1876, 1878, 1879, 1881	3,748 53
* e94903	James L. Kellogg	do	1879, 1881	392 50
* e94903	W. H. Stoddard	do	1876, 1881	4,719 70
* e94903	George W. Coomer	do	1879, 1880	1,062 63
* e94903	W. U. Thayer	do	1879, 1881	533 49
* e94903	John Higgs	do	1879, 1881	392 50
* e94903	William F. Brown	do	1878, 1881	1,599 37
e95009	W. M. Cherry *	do	1876, 1881	2,426 39
* e95009	R. A. Bensell	do	1877, 1879	344 00
* e95009	J. Q. A. Lothrop	do	1880, 1881	180 50
e95009	Mrs. Nellie Atchison *	do	1880, 1881	553 00
* e95009	Stephen Sharpe	do	1878, 1881	1,560 04
* e95009	Ethan Hammond	do	1876, 1881	831 00
e95009	Henry W. Pratt *	do	1878, 1881	1,046 55
* e95009	W. A. Forrester	do	1874, 1881	2,691 19
e95081	Martin Ranney *	do	1878, 1881	686 10
* e95081	William K. Beisel †	do	1876, 1881	4,720 04
* e95081	Silas Dixon	do	1876, 1881	3,792 24
* e95081	Alexander Maxwell	do	1881	682 78
* e95081	P. H. Ricker	do	1881	682 78
* e95081	Jacob L. Wallace	do	1876, 1877	1,365 00
* e95255	Thomas E. Scott	do	1874, 1876	1,131 16
e95255	Gustavus Smith *	do	1880, 1881	620 07
* e95255	James G. Waugh	do	1878, 1880	680 89
* e95254	Hiram M. Witherell	do	1876, 1877	497 28
* e95254	James Mitchell	do	1877, 1881	1,230 48
* e95254	Reuben Barton	do	1879, 1881	423 06
* e95254	Edwin B. Low	do	1881	47 70

(* Check-mark in copy.) († Check-mark in blue in copy.)

a Services as light-house keeper at Whitney's, No. 3, in May and June, 1883.
b Transportation furnished Treasury Department in August and September, 1882.
c Excess of deposit on account of merchant appraiser in 1878 and 1879.
d Services as boat man in July, 1881.
e Additional compensation as inspector of customs under sections 2733 and 2738, R. S. (See Adams *vs.* U. S. and Bradford *vs.* U. S., 20 Court of Claims, 115.)

Reported by the First Auditor and Commissioner of Customs, &c.—Continued.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	TREASURY DEPARTMENT—Cont'd.			
	Claims—Continued.			
a95254	Samuel Comer	Expenses of collecting the revenue from customs prior to July 1, 1883.	1876, 1878	$877 70
* a95254	John Albert Ladue	do	1876	276 00
* a95254	Herrick E. Warren	do	1875, 1881	1,535 26
* a95254	Charles Deal †	do	1876, 1881	1,347 46
* a95254	P. H. Shields	do	1874, 1881	1,305 45
* a95254	Joseph Hardy	do	1876	703 10
* a95254	Ferd. W. Gaptill	do	1876, 1881	3,606 09
* a95254	Erastus S. Mead	do	1880	102 00
* a95254	Stoughton D. Mix	do	1878, 1881	1,462 70
* a95254	Cornelius Bosworth	do	1874, 1881	1,723 41
* a95254	D. W. Shurtliff	do	1877, 1881	1,218 03
* a95532	Virgil A. Crawford	do	1879, 1881	1,521 38
* a95532	Jeremiah Abbott	do	1876, 1881	3,771 47
* a95532	Israel B. Abbott	do	1876, 1878	1,698 50
* a95532	Homer W. Styron	do	1876, 1881	4,276 64
a95532	Ebenezer Campbell *	do	1876, 1881	1,011 50
* a95532	Walter Gray	do	1879, 1880	198 00
* a95532	Almon L. Parmerter	do	1880	166 44
* a95532	Asa Fish	do	1876, 1881	4,180 83
* a95532	Levi Trundy	do	1879, 1881	1,657 93
* a95532	George B. Burnet	do	1877, 1881	3,244 43
* a95532	Harry Griswold	do	1876, 1881	3,138 92
* a95532	James L. Mallory	do	1876, 1881	3,667 23
* a95532	Charles Luling	do	876, 1877	977 15
* a95532	Julius R. Morris	do	1876, 1879	1,623 80
a95532	William T. Hopper *	do	1879, 1881	1,326 33
* a95532	William H. Rees	do	1875, 1878	468 40
a95532	John W. Norton	do	1880, 1881	186 00
* a95776	John Combs	do	1879, 1881	1,082 60
* a95776	Abner Reed	do	1877, 1879	1,240 00
* a95776	F. M. Noble	do	1877, 1878	1,358 50
* a95776	Fred. Hebard	do	1878, 1881	1,929 25
* a95776	Elman Tyler	do	1876, 1881	3,287 75
* a95776	D. O. De Wolfe	do	1876, 1881	3,287 75
* a95776	J. L. Cline	do	1876, 1879	1,998 40
* a95776	Robert H. Percy †	do	1879, 1881	1,189 35
* a95776	Jesse Babcock	do	1877, 1880	1,121 35
* a95776	T. O. Peck	do	1876, 1881	3,389 75
* a95776	John D. Flint †	do	1876, 1877	1,047 00
				135,936 39
b19560	Jesse Spaulding	Furniture and repairs of same for public building, 1883 and prior years.	1883	4 86
c19540	Herman Martens	do	1883	5 25
				10 11
d19546	Thomas Brown	Furniture and repairs of same for public buildings, 1884.	1884	170 20
	Total			136,132 41

(* Check-mark in copy.) († Check-mark in blue in copy.)

a Additional compensation as inspectors of customs under section 2733 and 2738, R. S. (See 20 Court of Claims, 115.)

b Money paid while collector of customs at Chicago for auctioneers' commissions and advertising sale of condemned furniture. No expenditure of money involved.

c Awnings and repairs to same, post-office, Indianapolis

d Gas fittings and labor furnished for post-office buildings in Philadelphia in March, 1884.

Recapitulation of Claims Allowed by the First Auditor and Commissioner of Customs.

Lighting and buoyage of the Mississippi, Missouri, and Ohio rivers, 1883 and prior years	$15 25
Marine Hospital Service prior to July 1, 1883	46
Expenses of collecting the revenue from customs prior to July 1, 1883	135,936 39
Furniture and repairs of same for public buildings, 1883 and prior years	10 11
Furniture and repairs of same for public buildings, 1884	170 20
Total	136,132 41

Summary of Claims.

State Department:	
Foreign intercourse	$2,220 49
Treasury Department:	
Customs	136,132 41
Internal revenue	11,564 08
Miscellaneous	995 68
	148,692 17
War Department:	
Second Auditor's accounts, army	235,157 86
Third Auditor's accounts, army	167,163 76
	402,321 62
Navy Department:	
Fourth Auditor's accounts, navy	80,891 92
Interior Department:	
Public-lands service	427 31
Miscellaneous, civil	338 83
Indians	1,224 88
	1,991 02
Post Office Department:	
Postal service	50,742 15
Department of Justice:	
Judicial expenses	13,337 81
Total	700,197 18

EXHIBIT H. M. B. No. 3.

List of Cases Settled in 1886, *Showing Amounts Allowed, Fees, &c.*

No. 1.

Name.	Allowance.	Fee.	Remittance.	Date of remittance.	Remitted by check.	No. of check.	Date of check.
William Williams, Chas. F. Harrington, adm'r	2,019 92	504 98	1,514 94	Aug. 30, 1886	1,514 94	337	Aug. 30, 1886
David D. O'Dell	3,444 14	861 04	2,583 10	Sept. 4, 1886	2,583 10	400	Sept. 4, 1886
John M. Robertson	557 13	139 28	417 85	" " "	417 85	401	" " "
John L. Howard	64 30	16 07	48 23	Sept. 2, 1886	48 23	379	Sept. 2, 1886
Joseph Davis	64 30	16 07	48 23	Aug. 31, 1886	48 23	341	Aug. 31, 1886
E. S. Petit	277 54	69 39	208 15	Aug. 30, 1886	208 15	336	Aug. 30, 1886
Asa Larned	315 50	78 88	236 62	" " "	236 62	335	" " "
Selden A. Jones	309 50	77 37	232 13	" " "	232 13	334	" " "
Frank Granger	78 00	19 50	58 50	Sept. 4, 1886	58 50	402	Sept. 4, 1886
Lawrence T. Remer	63 00	15 75	47 25	Sept. 13, '86	47 25	584	Sept. 13, 1886
H. S. Ballentine	161 47	40 37	121 10	Aug. 30, 1886	121 10	333	Aug. 30, 1886
Stephen H. Avery	197 73	49 43	148 30	Sept. 2, 1886	148 30	378	Sept. 2, 1886
W. A. Woodward	474 03	118 51	355 52	Aug. 31, 1886	355 52	340	Aug. 31, 1886
Emma Bills, adm'x, James Bills	261 00	65 25	195 75	Aug. 31, 1886 Aug. 31, 1886	195 75	339	Aug. 31, 1886
J. M. Jenks	413 71	103 43	310 28	Sept. 6, 1886	310 28	408	Sept. 6, 1886
Bela W. Jenks	432 00	108 00	324 00	Sept. 2, 1886	324 00	364	Sep. 2, 1886
Herbert C. Sanborn, Henry Hart, adm'r	337 16	42 14	295 02	Aug. 30, 1886	295 02	332	Aug. 30, 1886
S. B. Dickerson	104 00	26 00	78 00	Sept. 2, 1886	78 00	365	Sept. 2, 1886
		2,351 46					

No. 2.

Ezra S. Hamilton	1,253 80	313 45	940 35	Sept. 6, 1886	940 35	409	Sept. 6, 1886
Benj. D. Gifford	896 52	224 13	672 39	Aug. 30, 1886	672 39	328	Aug. 30, 1886
Vinal F. Hatch	2,379 23	594 81	1,784 42	Sep. 3, 1886	1,784 42	390	Sept. 3, 1886
S. S. Baker	421 45	105 36	316 09	Aug. 30, 1886	316 09	329	Aug. 30, 1886
Simeon Atwood	492 42	123 10	369 32	Sept. 3, 1886	369 32	391	Sept. 3, 1886

James Gifford	279 50	93 83	185 67	Aug. 31, 1886	185 67	427	Sept. 9, 1886	
J. A. Riopelle	5,452 36	1,363 09	4,089 27	Sept. 9, 1886	4,089 27	427	Sept. 9, 1886	
Charles E. Bury	392 50	98 12	294 38	Sept. 2, 1886	294 38	380	Sept. 2, 1866	
Benjamin Bulger	3,672 67	918 17	2,754 50	" " "	2,754 50	381	" "	
Frank Hesse	732 03	183 01	549 02	Sept. 9, 1886	549 02	422	Sept. 9, 1886	
David E. Johnson	1,849 61	462 40	1,387 21	Sept. 6, 1886	1,387 21	411	Sept. 6, 1886	
John Wood	1,645 36	411 34	1,234 02	Sept. 2, 1886	1,234 02	382	Sept. 2, 1886	
Rudolph Kern	346 30	86 58	259 72	" 4, "	259 72	403	" 4, "	
John S. Smith	1,461 00	365 25	1,095 75	Sept. 3, 1886	1,095 75	396	" 3, "	
Daniel Cole	675 04	168 76	506 28	Sept. 1, 1886	506 28	347	Sept. 1, 1886	
J. B. Hinchman	362 70	90 68	272 02	" 2, 1886	272 02	383	" 2, "	
Wm. L. Damon, E. P. Rowley, adm'r	183 50	45 88	137 62	Oct. 2, 1886	137 62	532	Oct. 2, 1886	
George King	674 64	168 66	505 98	Sept. 2, 1886	505 98	366	Sept. 2, 1886	
		5,792 67						

No. 3.

John E. Nellis	927 77	231 94	695 83	Sept. 2, 1886	695 83	367	Sept. 2, 1886	
Wilber Howard	183 50	45 88	137 62	Sept. 1, 1886	137 62	363	Sept. 1, 1886	
Orson B. Curtis	160 50	40 12	120 38	" 2, 1886	120 38	384	Sept. 2, 1886	
Alida Riggs, widow of Joseph H. Riggs	53 00	13 25	39 75	Sept. 9, 1886	39 75	424	Sept. 9, 1886	
Louis Cicotte	5,452 36	1,363 09	4,089 27	Sept. 3, 1886	4,089 27	392	Sept. 3, 1886	
C. R. Dannals	132 90	33 22	99 68	Sept. 2, 1886	99 68	368	Sept. 2, 1886	
R. W. Beach	300 55	75 14	225 41	" " "	225 41	369	" " "	
David E. Morgan	363 30	90 82	272 48	" 4, "	272 48	404	Sept. 4, 1886	
Otis Bradford	392 50	98 12	294 38	Sept. 2, 1886	294 38	370	Sept. 2, 1886	
D. Milo Heath	1,461 00	365 25	1,095 75	" " "	1,095 75	371	" " "	
Frederick G. McGraw, adm'r Virgil W. McGraw	392 50	98 12	294 38	Oct. 11, 1886	294 38	538	Oct. 11, 1886	
Lyman Styles	1,710 00	427 50	1,282 50	Sept. 2, 1886	1,282 50	385	Sept. 2, 1886	
Archibald Campan	3,748 53	937 13	2,811 40	" 6, "	2,811 40	412	Sept. 6, 1886	
James L. Kellogg	392 50	98 12	294 38	Sept. 4, 1886	294 38	405	Sept. 4, 1886	
W. H. Stoddard	4,719 70	1,179 93	3,539 77	Sept. 2, 1886	3,539 97	372	Sept. 2, 1886	
Geo. W. Coomer	1,062 63	265 66	796 97	" " "	796 97	373	" " "	
W. U. Thayer	533 49	133 37	400 12	" " "	400 12	374	" " "	
John Higgs	392 50	98 12	294 38	Sept. 1, 1886	294 38	348	Sept. 1, 1886	
		5,594 78						

Exhibit H. M. B. No. 3—Continued.

No. 4.

Name.	Allowance.	Fee.	Remittance.	Date of remittance.	Remitted by check.	No. of check.	Date of check.
Wm. F. Brown	1,599 37	399 84	1,199 53	March 25, 1887	1,199 53	654	March 25, 1887
R. E. Bensell	344 00	86 00	258 00	Sept. 29—gave Baker's.	per. check	to Ad.	Ex. Co.; took
J. Q. A. Lothrop	180 50	45 12	135 38	Sept. 1, 1886	135 38	349	Sept. 1, 1886
S. J. Sharpe & Stephen Sharpe	1,560 04	390 01	1,170 03	Duplicate ma Sept. 29, '86	iled Nov. 15, 1,170 03	1886. 593	Sept. 29, '86
Ethan Hammond	831 00	207 75	623 25	Sept. 1, 1886	623 25	350	Sept. 1, 1886
W. A. Forrester	2,691 19	672 79	2,018 40	" " "	2,018 40	351	" " "
Wm. H. Beisel, 15	4,720 01	708 00	4,012 01	" " "	4,012 01	352	" " "
Silas Dixon, Andrew T. Donaldson & Harriet Dixon, adm'rs.	3,792 24	948 06	2,844 18	Oct. 11, 1886	2,844 18	537	Oct. 11, 1886
Alexander Maxwell	682 78	170 70	512 08	Aug. 30, 1886	512 08	331	Aug. 30, 1886
P. H. Ricker	682 78	170 70	512 08	" " "	512 08	330	" " "
Jacob L. Wallace	1,365 00	341 25	1,023 75	Sept. 1, "	1,023 75	353	Sept. 1, 1880
Thomas E. Scott, C. B. F. Hinkley, adm'r	1,131 16	282 79	848 37	" 2, "	848 37	386	" 2, "
James E. Waugh	680 89	170 22	510 67	Sept. 29, '86	510 67	592	Sept. 29, '86
Hiram M. Witherill, Sarah M. Witherill, ex't'x	497 28	124 32	372 96	Oct. 4, 1886	372 96	595	Oct. 4, 1886
James Mitchell	1,230 46	276 76	953 70	Nov. 26, 1886	953 70	639	Nov. 26, 1886
Reuben Barton	423 00	100	323 00	Sept. 1, 1886	323 00	354	Sept. 1, 1886
Edwin B. Low	47 70	11 92	35 78	Sept. 15, '86	35 78	434	Sept. 15, 1886
Samuel Comer	877 70	219 42	658 28	Sept. 9, 1886	658 28	423	Sept. 9, 1886
		5,325 65					

No. 5.

John A. Ladne, Jacob Parmester, adm'r	276 00	69 00	207 00	Oct. 9, 1886	207 00	604	Oct. 9, 1886
Herrick E. Warren	1,535 26	383 81	1,151 45	Sept. 6, 1886	1,151 45	413	Sept. 6, 1886
Charles Deal, 20	1,347 46	269 50	1,077 96	Sept. 1, 1886	1,077 96	355	Sept. 1, 1886
P. H. Shields	1,305 45	326 36	979 09	" " "	979 09	356	"

Joseph Handy, Lucy Handy, adm'x	703 10	175 77	527 33	Sept. 25, '86	527 33	447	Sept. 25, '86
Ferd. W. Guptell	3,606 09	901 52	2,704 57	Sept. 1, 1886	2,704 57	357	Sept. 1, 1886
Erastus S. Mead, Sarah A. Mead, widow	102 00	25 50	76 50	" 3, "	76 50	393	" 3, "
Stoughton D. Mix	1,462 70	365 68	1,097 02	Sept. 9, '86	1,097 02	426	Sept. 9, '86
Cornelius Bosworth	1,723 41	430 85	1,292 56	Sept. 9, 1886	1,292 56	424	Sept. 9, 1886
D. W. Shurtliff	1,218 03	304 51	913 52	Sept. 6, 1886	913 52	414	Sept. 6, 1886
Virgil A. Crawford	1,521 38	380 34	1,141 04	Aug. 31, 1886	1,141 04	342	Aug. 31, 1886
Jeremiah Abbott	3,771 47	942 87	2,828 60	Sept. 1, 1886	2,828 60	358	Sept. 1, 1886
Israel B. Abbott	1,698 50	424 62	1,273 88	Aug. 31, 1886	1,273 88	343	Aug. 31, 1886
Homer W. Styron	4,276 64	1,069 16	3,207 48	Sept. 15, '86	3,207 48	435	Sept. 15, '86
Almon L. Parmester	166 44	41 61	124 83	Sept. 6, 1886	124 83	415	Sept. 6, 1886
Asa Fish	4,180 83	1,045 21	3,135 62	Sept. 2, 1886	3,135 62	377	Sept. 2, 1886
Levi Lundy	1,657 93	414 48	1,243 45	" 3, "	1,243 45	394	" 3, "
		7,570 79					

No. 6.

Geo. B. Burnet	3,244 43	811 11	2,433 32	Sept. 2, 1886	2,433 32	375	Sept. 2, 1886
Harry Griswold, L. S. Blake, adm'r	3,138 92	784 73	2,354 19	" 3, "	2,354 19	398	" 3, "
James L. Mallory	3,667 23	*[916 81]	2,750 42†	Draft sent claimant by Commissioner of Customs Nov. 18, 1886.			
Charles Luling	977 15	244 29	732 86	Sept. 2, 1886	732 86	376	Sept. 2, 1886
Julius R. Morris	1,623 80	405 95	1,217 85	" 3, "	1,217 85	395	Sept. 3, "
Wm. H. Rees	468 40	117 10	351 30	Sept. 1, 1886	351 30	359	Sept. 1, 1886
John Combs	1,082 60	270 65	811 95	Sept. 1, 1886	811 95	362	Sept. 1, 1886
Abner Reed	1,290 00	322 50	967 50	" " "	967 50	360	" " "
F. M. Noble	1,358 50	339 62	1,018 88	Oct. 8, 1886	1,018 88	602	Oct. 8, 1886
Fred. Hebard	1,929 25	482 31	1,446 94	Sept. 6, 1886	1,446 94	417	Sept. 6, 1886
	Dec. 2, 1886						
Elman Tyler	3,287 75	821 94	2,465 81	Draft sent claimant by Commissioner of Customs Dec. 1, 1886.			
D. O. De Wolfe, Louisa De Wolfe, adm'x, Edward H. Taft, adm'r; letter, Nov. 9, 1886, & Nov. 23d, 1886	3,287 75	*[821 94]	2,465 81	Draft sent by Commissioner of Customs to Louisa De Wolf, adm'x.			
J. L. Cline, Malvin Cline, adm'x	1,998 40	499 60	1,498 80	Oct. 2, 1886	1,498 80	531	Oct. 6, 1886
Robert H. Percy, 20	1,189 35	237 87	951 48	Sept. 4, 1886	951 48	407	Sept. 4, 1886

[* Erased in copy.]

†Clark.

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Exhibit H. M. B. No. 3—Continued.

Name.	Allowance.	Fee.	Remittance.	Date of remittance.	Remitted by check.	No. of check.	Date of check.
Jesse Babcock, Sara A. Babcock, adm'x; letter, Nov. 9, 1886, & Nov. 23d, 1886	1,121 35	*[280 34]	841 01	Draft sent by A. Babcock,	Commissioner of Customs to Sarah adm'x.		
T. O. Peck	3,389 75	847 44	2,542 31	Sept. 1, 1886	2,542 31	361	Sept. 1, 1886
John D. Flint, 15	1,047 00	157 05	889 95	" 2, 1886	889 95	387	" 2, "
		6,342 16					
		No. 7.					
Jno. R. Rouch		Fee in Wallace case		Sept. 1, 1886	136 50	373	Sept. 1, 1886
E. T. Wood		Fees in cases of John Wood & Lyman Stiles		" 2, "	167 76	389	" 2, "
Harris & Vance		In full for fees & 3 affidavits		" 4, "	156 17	399	" 4, "
Maynard & Swan		In full for fees		" 4, "	115 68	406	" " "
Martin Crocker		" " " Silas Dixon case		Oct. 11, "	316 02	418	" 6, "
E. P. Rowley		" " "			62 10	419	" " "
N. Dumont		" " " Styron case			534 58	Part cash & part check	
					1,488 81		

[* Erased in copy.]

EXHIBIT H. M. B. No. 4.

Showing Cases Suspended.

Wm. A. Little, Newburyport, Mass.
[John X. Miller, Phila.]*
James W. Bond, Ipswich, Mass.
* * * Newport, R. I.
[S. W. Hall,]* New Bedford, Mass.
[Joseph Taber,]* " "
[Geo. F. Sisson:]* affidavit filed May 26, 1886.
[J. H. Holmes;]* " "
[Thomas Hurst,]* Detroit, Mich.
Charles J. Fales, Bristol; collector's report very adverse on service.
[Thomas F. Usher,]* " 20 days per month only; collector says $720 per annum.
[Catherine Sweeney,]* Susp. P'dge.
[Benj. Predmore,]* Lt. Egg Harbor; p'd in full to 1875.
[J. Q. A. Lothrop,]* Boston; $900; Apr. 1, 1880, to M'ch 3, 1881; E. P.
[David G. Butte,]* Edgartown; case good; revoked p. of a. to us.
[Chas. L. Peale,]* New London; not full service.
[Henry W. Gladding,]* Bristol; " "
[Levi P. Downs,]* Pamlico, " "
Calib Carr, Bristol; no service.

Suspended, Sheet 2.

James Tucker, Fernandina;		paid in full.	
J. J. Bunteau,	Detroit;	"	" "
Lister H. Colton,	"	"	" "
Joseph Evans,	"	"	" "
James S. Hurst,	" p'd to M'ch 31, 1875;	"	" "
Wm. Farnsworth,	"	"	" "
A. McIlhenny,	"	"	" "
Jacob W. Moore,	"	"	" "
D. M. Freeman,	"	"	" "
A. W. Leggett,	"	"	" "

Joshua Haley, Stonington; no service.
[H. A. Ashmore,]* Burlington, N. J.; see case.
Affidavit filed May 26, 1886.
[Wm. J. Alden,]* Plymouth; not full service.
Marcus Peters, Aroostook; paid in full.
F. H. Vanderburg, Pt. Huron; paid in full.
Theo. C. Drew, adm'r, Scituate, Mass.; affidavit & p. of a. filed July 15, 1886.
[Dead; Joseph G. Drew,]* Plymouth; not full service.

[* Matter enclosed in brackets crossed with ink in copy.]

O. S. Wilcox, Cape Vincent; paid in full.
Alfred Meadus, Superior; " " "
Hiram K. Cole, " " " "

Suspended, Sheet 3.

Jonathan Hudson, Detroit; paid in full.
Peter Nichols, Gloucester; " " "
Joseph Smith, Duluth; " " "
Affidavit filed May 26, 1886.
[Stephen Holmes,]* Plymouth; not full service.
N. H. Fordham, Sag Harbor; not good.
Ezra C. Smith, New London; paid in full.

[* Matter enclosed in brackets crossed with ink in copy.]

EXHIBIT H. M. B. No. 5.

Showing Cases in which the Contract Fees Were Less Than 25 per Cent.

William Hukill, 20.	
Moses Lowell, —.	
W. P. Mason, Jr., 20.	No. 1.
J. H. Holmes, 12½.	
Daniel I. Hill, 20.	
B. F. Miller, 20.	
J. H. Bartlett, 33⅓.	
W. H. Rand, 12½.	25 p. c., p. a. of M'ch 16, 1885.
Milo L. Rice, 12½.	
S. P. Bartlett, 20.	
H. Lamb, 15.	
John A. McKay, 50.	
R. B. Biddlecom, 15.	
Geo. L. Ewins, 15.	
John E. P. Wright, 20.	No. 2.
Peter Lander, 20.	
A. J. Dudley, 12½.	
H. C. Sanborn, 12½.	
N. S. Smith, 20 (?).	See last settlement.
Asa Larnerd, —.	
R. H. Percy, 20.	
H. H. Dean, 20.	
Wm. Walker, 15.	
B. F. Kelley, 15.	
J. W. Haynes, 15.	
Chas. E. La Duke, 15.	
C. M. Booth, 15.	
J. S. Spaulding, 20.	
Asa C. Palmer, 15.	
N. H. Brown, 12½.	
Wm. H. Beisel, 15.	
Geo. W. Davis, 15.	No. 3.
G. E. Blood, 15.	
Geo. W. Brush, 15.	
H. T. Benedict, 15.	
A. S. Fleury, 20.	
David P. Whitcomb, 15.	
Henry E. Bedell, 15.	
Charles Deal, 20.	
John D. Flint, 15.	
J. P. Thomas, 20.	

Exhibit H. M. B. No. 6.

List of Cases Outstanding.

M'ch 14, with p. of a. Apr. 28, May 19, Sept. 16, Nov. 18.
Benj. C. Dearborn, Topsfield, Washington Co., Me.
M'ch 14, with p. of a. Apr. 28, Mar. 19, Sept. 16, Nov. 18.
J. L. Pierce, Machias, Washington Co., Me.
M'ch 14, with p. of a.
[Artell A. Hall, Damariscotta, Lincoln " "]*
A. B. Riford (dead), Benton Harbor, Berrien " Mich.
Apr. 28, Nov. 18. (From April, 1877, to Dec., 1880.)
[James J. Danhof, Grand Haven, Ottawa Co., Mich.]*
M'ch 14. Care Pack, Woods & Co., Refuses, Dresden, Saxony.
Edwin F. Holmes, Oscoda, Iosco Co., Mich.
M'ch 14, Apr. 28, May 19, Sept. 16, Nov. 18.
Albert H. Johnson, Northport, Leelman " "
M'ch 14, Apr. 28, May 19.
[Wm. E. Stewart, South Haven, Van Buren " "]*
Jan'y 18, 1887, with p. of a. M'ch 14, Apr. 28, May 19, Sept. 16.
Thomas E. Morris, Bargaintown, Atlantic Co., N. J.
Jan'y 18, 1887, M'ch 14, Apr. 28, May 19, Sept. 16.
(Clark.)
Andrew O'Neil, Lisbon, St. Lawrence Co., N. Y.
John B. Clough (?), Amherst, Lorain " Ohio.
Jan. 18, 1887, M'ch 14, Apr. 28, May 19, Sept. 16, Nov. 12.
From M'ch 1, 187
[Clinton Idlor (?),]* Put-in Bay, Ottawa Co., Ohio.
Jan. 18, 1887, M'ch 14, Apr. 28, May 13. In person.
[Eliphalet A. McWhorter, Satilla Bluff, Camden Co., Ga.]*
Jan. 18, 1887. St. Mary's.
[Frederick A. Hooke, Castine, Hancock " Me.]*
Robert S. Rogers, Havre-de-Grace, Harford " Md.
Jan. 18, 1887, M'ch 14. Paid in full.
[Geo. D. Wyman, Derby, Orleans " Vt.]*
Jan. 18, 1887, M'ch 14, Sept. 16.
Wm. M. Currier, Island Pond, Essex " "
S. A. Rendell, Stockton, Waldo Co., Me.
Benedict Yost.
Jan. 18, 1887; 29.
[Charles Johnston, Vermilion, Erie " Ohio.]*
[Hannah Moore, Boston, Suffolk " Mass.]*
Feb'y 3d, M'ch 12, M'ch 17, 29; Apr. 1.
922 Carrolton Ave.
[Annie M. Hopkins, Baltimore, Baltimore " Md.]*
Jan'y 1, 1887.
Eliza L. Foxwell (dead), " " " Md.
Jan'y 1, 1887; Jan. 18, M'ch 12, Sep. 16.
Charles H. Lewis, Cold Spring Harbor, Suffolk " N. Y.
Jan'y 4, 1887; [letter returned.]†

*[Matter enclosed in brackets crossed with ink in copy.]
†[In pencil in copy.]

Fred. S. Walls, Belfast, Waldo Co., Me.
Jan. 10, 1887.
[Harrison Southworth, Tappahannock, Essex Co., Va.]*
Jan. 8, 1887.
[Frank A. Slocomb, Onancock, Accomack " "]*
Jan. 24, Apr. 1, 1874, to Feb'y 1, '77, at $12 per annum; then to July 23, 1877, at $300.
[Edward L. Wright, Houghton, Houghton Co., Mich.]*
Jan. 24, M'ch 12, M'ch 18, Apr. 28, May 19, Sep. 15, Nov. 18 (Aug. 7, 1877, to Nov. 30, 1878).
W. W. Oliver, Escanabia, Delta Co., Mich.
Jan. 24, M'ch 12, Apr. 28; Feb. 1 to May 16, 1877; May 19, Sep. 15.
I. S. Chenowith, Ashland, Ashland Co., Wis.
Jan. 24, M'ch 12, Apr. 9, Apr. 28; Oct. 1, 1876, to Nov. 30, 1877.
Sep. 15, Nov. 18.
Phillip H. Paine, Lake Linden, Houghton Co., Mich.
Feb. 8, M'ch 14, Apr. 28, May 19; July 1, 1876, to Nov. 30, 1877.
[Samuel S. Fifield, Ashland, Wis.]*
[Feb. 8, M'ch 14, M'ch 25, Apr. 28,]* May 19; [July 1, 1876, to July 9, 1877.]*
Sep. 15.
C. S. Jenkins, Cleveland, Ohio.
A. H.
With p. of a. Jan. 24, M'ch 12 (M'ch 18), Apr. 9, Apr. 28, May 19, Sept. 15, Nov. 18.
John C. Higgins, Delaware City, New Castle Co., Del.
Jan. 26, M'ch 12, M'ch 18, Apr. 28.
Whitehall,
[G. H. Lasley, Montague, Muskegon Co., Mich.]*
Jan. 29, M'ch 12, Apr. 28; Jan'y 1, 1875, to May 19.
David S. Beetle, Edgartown, Dukes Co., Mass.
Feb'y 3.
[S. H. Newton, Rouse's Point, Clinton Co., N. Y.]*
Feb. 4.
[G. P. Kingsbury, Muskegon, Muskegon Co., Mich.]*
Feb. 4, M'ch 14, Apr. 1, Apr. 28, Sept. 16, Nov. 18.
Manistee, Manistee,
Thos. J. Ramsdell, [Mackinac, Mackinac]* Co.
Feb. 4, M'ch 14, M'ch 19.
Pension Office City.
Henry M. Newcombe, Ludington, Mason " "
Feb. 4, M'ch 14, Apr. 28, May 19, Sept. 16, Nov. 18.
Silas L. Soule, Wareham, Plymouth Co., Mass.
(Paid to 1878.)
Feb. 8, M'ch 14, Apr. 28, May 19, Sept. 16, Nov. 18.
Henry Hooker, Morristown, St. Lawrence Co., N. Y.
Feb. 9, M'ch 14, Apr. 28, May 19; Aug. 1, 1875, to end of service, July 1, 1876.
[Benj. C. Moore, Champlain, Clinton Co., N. Y.]*

*[Matter enclosed in brackets crossed with ink in copy.]

Feb. 11, M'ch 14; April 1, 1880, to M'ch 2, 1881.
[John E. Proctor, St. Mark's, Wakulla Co., Fla.; Dumont.]*
M'ch 3, M'ch 21, Apr. 28, Sept. 16, Nov. 18; succeeded by Hancock Dec. 1, 1877.
Giles W. Young, Pamlico, N. C.
Nov. 17, p. of a.; M'ch 27, 1876, to October 15, 1878.
Chas. T. Wicks, East Tawas, Iosco Co., Mich.
Nov. 19; from August 10, 1875, to [end of service].*
Samuel Butler, Painsville, Lake Co., Ohio.

(2) Care Peckston & Wilcox Co.

EXHIBIT H. M. B. No. 7.

List of Cases Pending.

New power of att'y filed.†

[Harry A. Ashmore,]* Burlington, N. J.; from (affidavit filed June 4, 1886) Aug. 1, 1875, to Nov. 30, 1875.
[Wm. H. Beisel,]‡ Detroit, Mich.; from (affidavit filed—auditor) March 4, 1879, to M'ch 2, 1881.
[Calvin A. Blood]‡ Huron, Mich.; from (affidavit filed May 26, 1886) Nov. 30, 1875, to the end of his service in that capacity.
[William Baird,]‡ [Huron, Mich.;]§ (duplicate, page 5;) [from Aug. 9, 1875, to M'ch 2, 1881.]§
[John Q. Barnard,]‡ superior, Mich.; from Dec. 16, 1876, to end of his service, &c.
[Josiah R. Brooks,]‡ Superior Mich.; from Dec. 16, 1876, to end of his service, &c.
[Reuben Barton,]‡ Champlain, N. Y.; from Jan'y 2, 1879, to M'ch 2, 1881.
[George W. Coomer,]‡ Detroit, Mich.; from March 4, 1879, to M'ch 2, 1881.
[Edward G. Crowell,]‡ [Barnstable, Mass.;]§ [paid in full;]‖ from Sept. 25, 1879, to M'ch 2, 1881.
[John T. W. Custis,]‡ Eastville, Va.; from (affidavit filed May 6, 1886; affidavit of Collector Toy filed Nov. 23, 1886) Sept. 30, 1875, to March 2, 1881.
[Silas Dixon,]‡ Detroit, Mich.; from (affidavit filed—auditor) March 3, 1879, to M'ch 2, 1881.
[David O. De Wolf,]‡ Cape Vincent, N. Y.; from Jan'y 1, 1876, to M'ch 2, 1881.
[John W. Funke,]‡ [Detroit, Mich.;]* from (paid in full) [March 3, 1879, to end of his service, &c.]*
[Minerva H. Glennie,]‡ adm'x, Au Sable, Mich.
[John W. Glennie,]‡ Huron, Mich.; from Nov. 30, 1875, to end of his service, &c.

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* [Matter enclosed in brackets crossed with ink in copy.]
† [Written with blue pencil in copy.]
‡ [Matter enclosed in brackets crossed with blue pencil in copy.]
§ [Matter enclosed in brackets crossed with pencil in copy.]
‖ [In pencil in copy.]

[Benjamin D. Gifford,]* Barnstable, Mass.; from Sept. 1, 1879, to March 2, 1881.

[D. M. Heath,]* Detroit, Mich.; from March 3, 1879, to March 2, 1881.

[Albert B. Holmes,]* Nantucket, Mass.; from Nov. 30, 1875, to March 2, 1881.

[Bela W. Jenks,]* Huron, Mich.; from (affidavits filed—auditor—Sept. 9, 1885) Dec. 1, 1875, to March 2, 1881.

[James M. Jenks,]* Huron, Mich.; from (affidavits filed—auditor) Dec. 1, 1875, to the end of his service, &c.

[Geo. J. Krebs,]* Sandusky, Ohio; from (affidavit filed May 26, 1886) Aug. 10, 1875, to March 2, 1881.

[Edwin B. Low,]* Champlain, N. Y.; from Dec. 1, 1880, to March 2, 1881.

[James Mitchell,]* Champlain, N. Y.; from Jan'y 1, 1877, to March 2, 1881.

[Joseph W. Sylvester,]* Sandusky, Ohio; from (affidavit filed June 7, 1886) Aug. 10, 1875, to March 2, 1881.

[John S. Smith,]* Detroit, Mich.; from March 3, 1879, to March 2, 1881.

[Nathaniel S. Smith,]* Eastville, Va.; from (affidavit filed Mar. 6, 1886; affidavit of Collector Toy filed Nov. 23, 1887) Dec. 1, 1875, to March 2, 1881.

[Stephen Sharpe,]* Oswegatchie, N. Y.; from Jan'y 7, 1878, to March 2, 1881.

[Philip W. Signor,]* Champlain, N. Y.; from (Sept. 7, 1879)‡ Aug. 1, 1875, to March 2, 1881.

[Levi Trundy,]* Belfast, Me.; from Feb'y 1, 1879, to March 2, 1881.

[Edward Twiss,]* [Huron, Mich.; from]† (paid in full) [June 22, 1874, to Dec. 1, 1875.]†

[Ehman Tyler,]* Cape Vincent, N. Y.; from Jan'y 1, 1876, to March 2, 1881.

[Calvin W. Appleby,]* Cuyahoga, Ohio; from (affidavit filed Feb'y 2, 1886) Aug. 10, 1875, to the end of his service, &c.

[Abram G. Butler,]* Michigan, Mich.; from (affidavit filed May 26, 1886) Aug. 10, 1875, to March 2, 1881.

[Hiram Brown,]* Michigan, Mich.; from Aug. 10, 1875, to March 2, 1881.

[Otis Bradford,]* Detroit, Mich.; from (March 3, 1879)‡ April 1, 1879, to March 2, 1881.

Duplicate?§

[Reuben Barton.]* Champion, N. Y.; from Dec. 10, 1875, to March 2, 1881.

[William Baird.]* Huron, Mich.; from Aug. 10, 1875, to March 2, 1881.

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* [Matter enclosed in brackets crossed with blue pencil in copy.]
† [Matter enclosed in brackets crossed with pencil in copy.]
‡ [In pencil in copy.]
§ [Written with blue pencil in copy.]

[William F. Brown,]* Perth Amboy, N. J.; from Jan'y 1, 1877, to March 2, 1881.

[Hubbard M. Clemons,]* Sandusky, O.; from (affidavit filed June 11, 1886) Aug. 10, 1875, to March 2, 1881.

[Samuel Corner,]* Champlain, N. Y.; from Aug. 1, 1875, to March 2, 1881.

[J. L. Cline,]* Cape Vincent, N. Y.; from Jan'y 1, 1876, to the end of his service, &c.

[Albert Ellsworth,]* [Superior, Mich.; from Nov. 19, 1874, to the end of his service, &c.]†

[Harry Griswold,]* Milwaukee, Wis.; from Aug. 10, 1875, to March 2, 1881.

[Geo. H. Gregory,]* Huron, Mich.; from (affidavit filed May 26, 1886) Dec. 1, 1875, to March 2, 1881.

[Edward B. Harris,]* Sag Harbor, N. Y.; from (affidavit filed May 26, 1886) August 1, 1875, to March 2, 1881.

Dead. [George S. Harkins,]* Sandusky, Ohio; from (affidavit & p. of a. of executors filed May 26, 1886; letters of administration filed June 1, 1886) August 10, 1875, to March 2, 1881.

[Daniel K. Huntington,]* Sandusky, Ohio; from (affidavit filed May 26, 1886) August 10, 1875, to March 2, 1881.

[Albert C. Hayward,]* Superior, Mich.; from Dec. 15, 1876, to March 2, 1881.

[Louis M. Hartwick,]* Michigan, Mich.; from (affidavit filed May 26, 1886) Aug. 10, 1875, to end of service, &c.

Dead. Caroline M. Lowen, adm'x. [William Lowen,]* Sag Harbor, N. Y.; from (affidavit, p. of a., & letters of adm. filed June 28, 1886) Aug. 10, 1875, to M'ch 2, 1881.

[Charles Luling,]* Milwaukee, Wis.; from Aug. 10, 1875, to Oct. 31, 1876.‡
March 2, 1881.

[Mark Z. Lapham,]* Cuyahoga, O.; from Aug. 10, 1875, to March 2, 1881. Letters of administration and affidavit filed Apr. 24, 1886.

[Julius R. Morris,]* Milwaukee, Wis.; from Aug. 10, 1875, to the end of his service, &c.

[James L. Mallory,]* Milwaukee, Wis.; from Aug. 10, 1875, to March 2, 1881.

[James Mitchell,]* Champlain, N. Y.; from Jan'y 1, 1877, to
Duplicate.‡
March 2, 1881.

[Orrin W. Robinson, Superior, Mich.; from —.]§

Wm. H. Stoddard, Detroit, Mich.; from (affidavits filed — auditor) Aug. 10, 1875, to March 2, 1881.

Francis E. Witsell, St. Augustine, Fla.; from (affidavit filed May 12, 1886) Aug. 11, 1877, to April 26, 1880.

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* [Matter enclosed in brackets crossed with blue pencil in copy.]
† [Matter enclosed in brackets crossed with pencil in copy.]
‡ [Interlined in blue pencil in copy.]
§ [Matter enclosed in brackets crossed with ink in copy.]

[James J. Potter,]* Huron, Mich.; from (affidavit filed M'ch 29, 1886, — 1st auditor) Sept. 80, 1875, to May 1, 1879.

[O. W. Robinson,]* Superior, Mich.; from Dec. 15th, 1875, to end of service.

[P. C. Bird,]* Superior, Mich.; from Dec. 15, 1875, to Sept. 4, 1878.

[H. C. Carleton,]* [Superior, Mich.; from Jan'y 1, 1877, to Nov. 8, 1879.]† (Paid in full.)

[Albert Ladue,]* Champlain, N. Y.; from July 31, 1875, to Dec. 31, 1876.‡

Jan'y 16, 1877.

[F. M. Holden,]* Castine, Me.

[Frank Granger,]* Huron, Mich. (Affidavit filed Feb'y 11, 1887.)

[Chas. M. Bentley,]* " "

[Henry S. Ballentine,]* " "

[Andrew Green,]* Manitee, Fla.

[A. L. Parmester,]* Cape Vincent, N. Y.

[C. S. Bunker,]* Nantucket, Mass.

[W. A. Woodward,]* Huron, Mich.

[Archibald Campan,]* Detroit, Mich.; from Aug. 1, 1875, to March 2, 1881.

[J. A. Riopelle.]* Same as Campan.

[Louis Cicotte.]* " " "

[Alex. Maxwell,]* Kennebunk, Me.; July 1, 1880, to March 3, 1881.

[P. H. Ricker,]* Kennebunk, Me.; July 1, 1880, to March 3, 1881.

[Abner Reed,]* Cape Vincent, N. Y.; from April 6, 1877, to the end of his service as such.

[Lem. Van Boskerck,]* Yorktown, Va.; from Oct. 11, 1878, to Jan'y 21, 1881.

[Selden A. Jones,]* Huron, Mich.; from Aug. 19, 1876, to the end of his service as such.

[Virgil A. Crawford,]* Pamlico, N. C.; from March 18, 1879, to M'ch 2, 1881. Affidavit filed July 6, 1886; one Mr. Moffit's.

[William H. Tefft,]* Champlain, N. Y.; from (Mr. Martin's aft. filed June 28, 1886; affidavit filed June 9, 1886) Sept. 11, 1875, to Dec., 1880.

[George S. Lester,]* Huron, Mich.; from (affidavit filed May 26, 1886) May 1, 1879, to March 2, 1881.

[John P. Rieg,]* Cuyahoga, Ohio; from (affidavit filed Feb'y 2, 1886) Jan'y 19, 1877, to March 2, 1881.

[Israel B. Abbott,]* Pamlico, N. C.; from July 9, 1874, to March 2, 1881.

[Nathaniel Robinson,]* Huron, Mich.; from (affidavit filed May 26, 1886) Oct. 25, 1878, to March 2, 1881.

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* [Matter enclosed in brackets crossed with blue pencil in copy.]
† [Matter enclosed in brackets crossed with pencil in copy.]
‡ [Interlined with blue pencil in copy.]

[B. F. Hinkley,]* adm'r estate of Thomas E. Scott, Bath, Maine; from June 22, 1874, to June —, 1876.

[Wm. H. Gibbs,]* Nantucket, Mass.; from Sept. 16, 1876, to the — of his service as such.

[David McDole,]* Chicago, Ill.; from June 22, 1874, to April —, 1880.

[Andrew J. Kidd,]* Superior, Mich.; from Feb'y —, 1877, to March 2, 1881.

Anna E. Keeler, adm'x,

Dead. [William F. Keeler,]* St. Johns, Fla.; from (certificate & p. of a. filed June 28, 1876) May 1, 1878, to Dec. 6, 1880.

[Charles B. Tyler,]* Sandusky, Ohio; from (affidavit filed May 26, 1886) April 24, 1877, to the end of his service as such.

[Wm. Williams,]* Stonington, Conn.; from April 8, 1878, to March 2, 1881.

[Ethan Hammond,]* Oswegatchie, N. Y.; from April 1, 1876, to July 10, 1880.

[Geo. B. Burnet,]* Milwaukee, Wis.; from Nov. 6, 1876, to March 2, 1881.

[Ferdinand W. Guptill,]* Saco, Maine; from Aug. 3, 1875, to March 2, 1881.

[Roland H. Brelsford,]* Superior, Mich.; from July 20, 1877, to March 2, 1881.

[Will. H. Fuller,]* Michigan, Mich.; from (affidavit filed May 26, 1886) Nov. 23, 1876, to March 2, 1881.

[John Combs,]* Cape Vincent, N. Y.; from May 1, 1879, to Dec. 3, 1880.

[Asa Larned,]* Huron, Mich.; from April 21, 1879, (?) to March 2, 1881.

[J. Q. A. Lathrop,]* Boston, Mass.; from April 1, 1880, to March 2, 1881.

[Edward H. Green,]* Michigan, Mich.; from (affidavit filed May 26, 1886) —.

[Geo. M. Sackrider,]* Superior, Mich.; from —.

[Allen P. Tilton,]* Little Egg Harbor, N. J.; from —.

[Herrick E. Warren,]† Champlain, N. Y.; from [Aug. 9, 1875, to M'ch —, 1881].‡

[Lawrence T. Remer,]* Huron, Mich.; from —.

[Nathan H. De Coster,]* Key West, Fla.; from Sept. 15, 1879, to March 2, 1881.

[Michael A. Powers,]* Superior, Mich.; from May 1, 1876, to Nov. 30, 1877.

[R. H. Percy,]* Cape Vincent, N. Y.; from May 1, 1879, to March 2, 1881.

[Frank D. Clark,]* Superior, Mich.; from Nov. 30, 1878, to March 2, 1881.

[Alida Riggs,]* widow of Joseph Riggs, Detroit, Mich.; from June 22, 1874, to end of service as such.

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* [Matter enclosed in brackets crossed with blue pencil in copy.]
† [Matter enclosed in brackets crossed with pencil in copy.]
‡ [In blue pencil in copy.]

[Noah S. McGarry,]* Passamaquoddy, Me. (two affidavits filed May 26, 1886—one of S. B. Berry; others on file); from June 20, 1878, to March 2, 1881.

Affidavit of Peter A. Martin filed May 27, 1886.

[H. M. Witherill,]* Champlain, N. Y.; from May 27, 1876, to Dec. 18, 1876.†

end of service.

[Frederick H. Hebard,]* Cape Vincent, N. Y.; from March —, 1878, to March 21, 1881.

[George T. Arnold,]* Michigan, Mich.; from (affidavit filed May 26, 1886) Aug. 2, 1875, to March 2, 1881.

[R. A. Bensell,]* Oregon, Oregon; from Oct. 23, 1876, to end of service.

[John W. Bartlett,]* Little Egg Harbor, N. J., from (affidavit filed May 8, 1886) June 22, 1874, to end of service.

[Gage Inslee,]* Huron, Mich.; from June 22, 1874, to end of service.

[Edward W. Fisk,]* Cuyahoga, Ohio; from (affidavit filed Feb'y 2, 1886) March 17, 1877, to March 2, 1881.

[S. B. Dickerson,]* Middleton, Conn.; from Aug. 1, 1875, to end of service.

[William H. Coe]* [(deceased), St. Augustine, Fla.; from April to November, 1879.]‡

[Charles H. Coe,]* [St. Augustine, Fla.; from Nov. —, 1879, to March 2, 1881.]‡

[James Bills,]* [Huron, Mich.; from May 1, 1875, to end of service.]‡

[Will. H. Solis,]* [Superior, Mich.; from Dec. 2, 1876, to end of service.]‡

[Barclay P. Adams,]* [Sag Harbor, N. Y.; from (affidavit filed May 23, 1886) July 13, 1880, to March 2, 1881.]‡

[John D. Flin,]* Detroit, Mich.; from [(suspended in office]‡ of com'r of customs) Aug. 10, 1875, to end of service.

[H. A. House,]* Cape Vincent, N. Y.; from July 31, 1875, to end of service.

[Charles Delamere,]* Michigan, Mich.; from (affidavit filed May 29, 1886) May 1, 1878, to March 2, 1881.

[Henry W. Butte,]* Edgartown, Mass.; from Nov. 17, 1875, to March 2, 1881.

[Darwin W. Shurtliff,]* Champlain, N. Y.; from Jan'y 17, 1877, to M'ch 2, 1881.

Chas. E. Aiken, Superior, Mich.; from April 1, 1878, to Feb'y 28, 1880.

[Wm. R. Durfee,]* Superior, Mich.; from May 10, 1877, to M'ch 2, 1881.

[Joseph P. Thomas,]* Castine, Me.; from June 22, 1874, to Oct. 27, 1880.

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* [Matter enclosed in brackets crossed with blue pencil in copy.]
† [Written with blue pencil in copy.]
‡ [Matter enclosed in brackets crossed with pencil in copy.]

[James F. Moffatt,]* Cape Vincent, N. Y.; from June 1, 1877, to Aug. 31, 1879.

[James A. Crofer.]* Superior, Mich.; from July 23, 1877, to April 1, 1878.

[Cornelius Bosworth,]* Champlain, N. Y.; from June 22, 1874, to March 2, 1881.

[S. D. Mix,]* Champlain, N. Y.; from M'ch 21, 1878, to M'ch 2, 1881.

[Erastus S. Mead,]* Champlain, N. Y. (Sarah A. Mead, widow); from [Apr. 22, 1880, to Nov. 30, 1880]† May 1, 1879, to Mar. 2, 1881.

[Charles Deal,]* Champlain, N. Y.; from June 1, 1876, to March 2, 1881.

[Wm. A. Forrester,]* Oswegatchie, N. Y.; from June 22, 1874, to Mar. 2, 1881.

[T. O. Peck,]* Cape Vincent, N. Y.; from July 1, 1875, to March 2, 1881.

[Charles D. Staples,]* Vermont, Vt.; from August 1, 1875, to Dec. 30th, 1876.

[L. L. Penniman,]* Vermont, Vt.; from August 1, 1875, to March 2, 1881.

[John J. Bain, Jr.,]* Vermont, Vt.; from June 22, 1874, to the end of his service.

[Julius S. Dorman,]* Vermont, Vt.; from August 1, 1875, to the end of his service.

[Nathan K. Martin,]* Vermont, Vt.; from Aug. 24, 1875, to March 2, 1881.

[William H. Rand,]* Vermont, Vt.; from Aug. 1, 1875, to March 2, 1881.

[Charles Wells,]* Vermont, Vt.; from May 28, 1879, to March 2, 1881.

[Dwight Q. Follett,]* Milwaukee, Wis.; from (affidavit filed July 8, 1886) March 1, 1879, to March 2, 1881.

[N. H. Brown,]* Delaware, Del.; from June 22, 1874, to March 2, 1881.

[Robert Hancock, Jr.,]* Pamlico, N. C.; from (affidavit filed May 13, 1886) Dec. 1, 1877, to March 2, 1881.

[Edward Ashman,]* Superior, Mich.; from June 22, 1874, to end of service.

[Joseph Fleshiem,]* Superior, Mich.; from June 22, 1874, to end of service.

[H. F. Milliken,]* Portland, Me.; from —— to ——.

[N. L. Hungerford,]* Vermont, Vt.; from April 1, 1875, to payment in full.

[Philip H. Raiford,]* per Mrs. F. J. R., widow, St. Mary's, Ga.; from Dec. 1, 1875, to Feb'y 28, 1878.

[Wm. H. Atkins,]* St. Augustine, Fla.; from (affidavit filed May 12, 1886) March 13, 1879, to April 21, 1880.

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* [Matter enclosed in brackets crossed with blue pencil in copy.]
† [Matter enclosed in brackets written with blue pencil in copy.]

[Henry E. Bedell,]* Vermont, Vt.; from Aug. 1, 1875, to M'ch 2, 1881.

[Chas. B. McLellan,]* St. Augustine, Fla.; from Jan'y 5, 1878, to end of service.

[Lorenzo Ricard,]* Vermont, Vt.; from (affidavit of J. S. Dorman filed July 8, 1886; affidavit of J. S. Dorman filed Feb'y 11, 1887; affidavit of A. S. Fleury filed July 15, 1886) June 22, 1874, to March 3, 1881. Affidavit of S. H. Newton filed Feb. 11, 1887.

[David P. Whitcomb,]* Vermont, Vt.; from (paid in full; letter Aug. 14, 1886, so saying)† Aug. 1, 1875, to end of service.

[Asa C. Palmer,]* Vermont, Vt.; from July 8, 1874, to end of service.

[Patrick H. Shields,]* Champlain, N. Y.; from June 22, 1874, to March 2, 1881.

[Allen S. Fleury,]* Vermont, Vt.; from (affidavit filed July 15, 1886; affidavit of N. K. Martin filed July 19, 1886) June 22, 1874, to M'ch 2, 1881.

[Geo. D. Sowles,]* Vermont, Vt.; from June 22, 1874, to end of service.

[J. S. Spaulding,]* Vermont, Vt.; from Sept. 8, 1879, to M'ch 2, 1881.

[Joseph Barthelow,]* Brazos de Santiago, Texas; from —— —, ——, to March 2, 1881.

nix‡

[James Lowe,]* Portland, Me.; from Nov. 9, 1877, to June 20, 1878.

[Fred. C. Blood,]* Huron, Mich.; from (affidavit filed May 26, 1886) May 1, 1879, to M'ch 2, 1881.

[J. H. Brooks,]* Vermont, Vt.; from June 22, 1874, to M'ch 2, 1881.

[Solomon Story, Jr.,]* Vermont, Vermont; from Aug. 1, 1875, to M'ch 2, 1881.

[Cassius M. Booth,]* Vermont, Vt.; from Dec. 1, 1875, to M'ch 31, 1880.

[H. T. Benedict,]* Vermont, Vt.; from June 22, 1874, to Jan'y 14, 1876.

[H. H. Rounds,]* Vermont, Vt.; from Aug. 1, 1875, to March 3, 1881.

[Geo. E. West,]* Vermont, Vt.; from Aug. 1, 1875, to March 3, 1881.

[John E. P. Wright,]* Vermont, Vt.; from (272 days) Dec. 31, 1878, to May 12, 1879; from Dec. 31, 1879, to April 25, 1880, & from Jan'y 1, 1881, to March 3, 1881.

[Geo. W. McBride,]* Michigan, Mich.; from (affidavit filed June 1, 1886) April 9, 1875, to end of service.

[Geo. W. Brush,]* Vermont, Vt.; from June 22, 1874, to July 31, 1875.

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*[Matter enclosed in brackets crossed with blue pencil in copy.]
†[In pencil in copy.]
‡[Interlined with blue pencil in copy.]

[Geo. L. Ewins,]* Vermont, Vt.; from Jan'y 1, 1876, to March 2, 1881.

[Chas. E. Laduke,]* Vermont, Vt.; from Dec. 1, 1875, to March 3, 1881.

[S. E. Blood,]* Champlain, N. Y.; from June 22, 1874, to March 3, 1881.

[J. L. Wallace,]* Detroit, Mich.; from Aug. 10, 1875, to end of service.

[J. W. Haynes,]* Champlain, N. Y.; from May, 1879, to March 3, 1881.

[H. H. Dean,]* Vermont, Vt.; from January 1, 1875, to M'ch 3, 1881.

[E. J. de Medicis,]* St. Augustine, Fla.; from (affidavit filed May 12, 1886) June 22, 1874, to July 5, 1878.

[A. A. Reed, Richard O'Neil, & D. K. Zottman,]* each Vermont, Vt.; from Aug. 1, 1875, to end of service.

[Wm. P. Mason, Jr.,]* Vermont, Vt.; from Aug. 1, 1875, to March 3, 1881.

[H. H. Adams,]* Vermont, Vt.; from August 1, 1875, to March 3, 1881.

[Geo. W. Davis,]* Champlain, N. Y.; from June 22, 1874, to March 2, 1881.

[Milo L. Rice,] Cuyahoga, Ohio; from (affidavit filed Feb'y 2, 1886) Aug. 10, 1875, to March 17, 1877.

[B. F. Kelley,]* Vermont, Vt.; from June 22, 1874, to March 3, 1886.

nix†

[Miles W. Hall,]* Detroit, Mich.; from date of reduction to March 3, 1881.

[J. M. Johnson,]* Machias, Me.; from (his affidavit & certificate of date and Sundays heretofore deducted — collector; filed July 16, 1886) M'ch 31, 1878, to M'ch 3, 1881.

[Calice Limoge,]* Vermont, Vt.; Jan'y 1, 1878, to March 3, 1881.

nix†

[E. B. Welton,]* Detroit, Mich.; Sept. 1, 1877, to M'ch 2, 1881.

[Walter Gray,]* May 1, 1879, to April 30, 1880.

[Wm. H. Rees,]* [Clayton, N. Y.;]§ June 26, 1875, to Aug. 31, 1877.

[James Lasby,]* Michigan, Mich. (affidavit filed May 26, 1886); Aug., 1875, to March 2, 1881.

[Crawford Dunn,]* Portland, Maine; from Dec. 1, 1877, to end of service.

[Charles O. Churchill.]* Plymouth, Mass.; from Dec. 1, 1875, to March 3, 1881.

[William Walker,]* [Vermont, Vt.; from Aug. 1, 1875, to —. (Paid in full.)]‡

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* [Matter enclosed in brackets crossed with blue pencil in copy.]
† [Interlined with blue pencil in copy.]
‡ [Matter enclosed in brackets crossed with ink in copy.]
§ [In pencil in copy.]

[Robert Jamison, Baltimore, Md.; from] (nix; paid in full) [April — to June 20, 1878.]*

[Peter Lander,]† Vermont, Vt.; from (new power of attorney filed Aug. 20, 1886) June 20, 1878, — Dec. 31, 1880.

[Gould D. Jennings,]† Fairfield, Conn.; from (new p. of a.; two affidavits filed March 30, 1888) June 22, 1874, to March 3, 1881.

[Geo. Matthews,]† Vermont, Vt.; from (new p. of a.) April 19, 1880, to March 3, 1881, and Sundays & holidays since.

D. C.

O. B. Curtis, Detroit, Apr. 16, 1880, — M'ch 3, 1881.
James Gifford, Barnstable, Oct. 1, 1879, " "
Samuel S. Baker, " " " " "
Simeon Atwood, " " " " "
Vinal F. Hatch, " Sept. 29, 1877, " "
John A. McKay, Key West, Oct., " June 20, 1879.
July 31, 1875.‡
Otis Little, Castine, Dec. 1, 1875, to Sept. 12, 1878.
John E. Nellis, Detroit, Jan'y 24, 1880, — M'ch 3, 1881.
New p. of a. & affidavits filed.
John D. Thompson, Detroit, April 19, 1877, " "
John T. Howard, Port Huron, Nov. 1, 1880, " "
V. W. McGraw, Detroit, M'ch 4, 1879, " "
S. P. Bartlett, Lt. Egg Harbor, Apr. 19, 1878, " "
Thomas H. Starr, Dunkirk, Dec. 1, 1875, to end of service.
J. H. Hamlin, Machias, Apr. 1, 1879, — M'ch 3, 1881.
See other applications.§ M'ch 31, 1879.‡
J. M. Johnson, Dec. 1, 1875, " "
(Affidavit filed, c. of c., May 10, 1886.)
J. L. Schuyler, Cape Vincent, Jan'y 1, 1876, to end of service.
Matthew Hooper, Key West, Jan'y 25, 1879, — M'ch 2, 1881.
J. L. Cline, Cape Vincent, Jan'y 1, 1876, — end of service.
F. M. Noble, " " " " "
Jesse Babcock, Cape Vincent, " " " " "
Ezra S. Hamilton, Middletown, Dec. 1, 1875, [" " (?)]‡
James Paine, Jr., St. Augustine, May 24, 1878, — M'ch 3, 1881.
James G. Waugh, Bath, April 3, 1878, — [July 20, 1879.]‡
Asa Fish, Stonington, Dec. 1, 1875, " "
Dec. 1, 1875, to Dec. 31, 1876.‡
Jan'y 25,‖ 1875. ?‡
Joseph Hardy, Saco, Dec. 1, 1875. — July 20, 1879.
Homer W. Styron, Pamlico, Nov. 9, 1875, " "
Edwin S. Peht, Huron, Apr. 11, 1878, " "

[Matter enclosed between rules crossed with blue pencil in copy.]
* [Matter enclosed in brackets crossed with ink in copy.]
† [Matter enclosed in brackets crossed with blue pencil in copy.]
‡ [Written with blue pencil in copy.]
§ [In pencil in copy.]
‖ [Written with blue pencil in copy and crossed.]

Lyman Styles, Detroit, M'ch 4, 1876, — end of service.
Dec. 31, 1879.*
Stephen H. Avery, Pt. Huron, July 10, 1877, — M'ch 2, 1881.
Bis†
Charles S. Bunker, Nantucket, app't to " "
F. H. Koch, Dunkirk, Dec. 1, 1875, — end of service.
Jeremiah Abbott, Pamlico, Nov. 9, 1875, — M'ch 2, 1881.
John M. Robertson, Huron, M'ch 30, 1880, " "
Rudolph Kern, Detroit, May 23, 1879, " "
Benj. Bulger, " Nov. 9, 1876, " "
Daniel Cole, " May 1, 1879, " "
Wilbur Howard, " Feb'y 25, 1880, " "
John Wood, " April 1, 1879, " "
3. D. C.
26†
Joseph Davis, Huron, Nov. 1, 1880, — M'ch 2, 1881.
Affidavit filed Nov. 11–23, 1885.
David D. O'Dell, Aug. 10, 1875, — end of service.
Louis A. Skarron, Beaufort, N. C., Dec. 1, 1875, — end of service
O K† See this.†
Brad. C. Hurd, Huron (Dec. 1, 1875), Apr. 19, 1875. (?)
Geo. King, Detroit, May 1, 1879, — M'ch 3, 1881.
W. L. Damon, " Feb'y 25, 1880, " "
David E. Johnson, " Apr. 30, 1875, " "
James L. Kellogg, " M'ch 4, 1879, " "
John Higgs, " " " " "
J. B. Hinchman, " May 1, 1879, " "
Edward M. Smith, Swanton, Aug. 10, 1880, " " E. F
John R. Bradford, St. Mark's, June 1, 1879, " "
C. B. Bury, Detroit, M'ch 4, 1879, " "
Chas. R. Da[illegible]anals, " " " " "
Wm. N. Tha[illegible]er, " " " " "
David E. Mo[illegible]gan, " Apr. 30, 1879, " "
Francis Hesse, " M'ch 4, 1879, " "
R. W. Brach, " " " " "
Alex. Ferguson, Huron, Aug. 10, 1875, — end of service.
Chas. S. Mins, " " " " "
David S. Butte, Edgartown, Mass.

[Matter enclosed between rules crossed with blue pencil in copy.]
* [Written with blue pencil in copy.]
† [In pencil in copy.]

A call is made on the defendant for a list of fees collected by him on the partnership account for and during the 12 mounths prior to the dissolution other than the inspector cases which he claims as entirely his own.

In reply to the above call the defendant says that all such fees are scheduled in his suit at law against the said complainant, and that the said complainant has had the same served upon him in said suit.

A call is made on the defendant to file a schedule of the cases in his hands at the time of the dissolution of the partnership with the complainant or in which the said defendant had an interest secured or acquired during such partnership, the nature and condition of each of such cases, where filed, when, the amount claimed, the amount allowed, the fee contracted for or charged in each case.

In reply to the above call the defendant says that he does not remember any such cases except those in the Pension Office turned over to J. A. Vermilya & Co., with the complainant's knowledge and approval, and the cases then pending in the Indian Office and War or Treasury Departments received from John B. Clark, and other cases, and by arrangement in the hands of the complainant for prosecution. Defendant further says that he believes the complainant has the record books showing those cases, and that, not being able to find those books, he cannot more definitely answer said call.

EXHIBIT H. M. B. NOS. 10 AND 11.

Copy.

H. S. Cummings, Esq.

DEAR SIR: I have carefully read your so-called "Meditations," purporting to have been written by you in 1886, and am more than surprised that you could in your sober senses ever put such thoughts in writing.

I do not know when it has been my lot to read a more inaccurate statement both in letter and in spirit. I shall not take the time to reply to every false statement, but shall reply to the more important ones. But before proceeding to do so I wish to say that it seems very strange to me that you should have entertained such views as the "Meditations" express for three long years and during all that time sit in the same room with the offending party and never express any dissatisfaction to him; also that you should have meanwhile told third parties your alleged grievances, so that my very first intimation that you were not entirely satisfied should have come to me from persons who have no right whatever to know our business and business relations.

You say that in 1874 I requested a general partnership and that I repeated my request and that you finally agreed to it in the winter of 1875.

If you will recall the facts you will remember that there has never been any written agreement between us.

when the matter was considered by us in

1874 you said you had cases then pending and that you did not wish to divided the fees in those cases. I replied that that was all right, and it was agreed that I was not to share in the cases then on file. I deny that then or at any other time a partnership or partnership agreement than the verbal one entered into in 1874, until for reasons then fully given I proposed certain changes in 1886, which resulted in my buying all your interest in the so-called "inspector cases."

You speak of your services in the inspector cases and say "we discovered them."

I do not think you will, upon reflection, claim that you had any part in discovering them. You will probably remember that not until after I had explained and argued them with you that you even agreed that they might be good. You will also probably admit that I have had the management and control of them; that all the arguments, oral and printed, in the Treasury Department, before the Attorney General, before the Appropriation Committees, and in the Court of Claims have been made by me. In fact, I believe you do not claim that you did any of the legal work in those cases—only that you interviewed and fed public officials in aid of them. So far as such services were rendered in connection with Messrs. Bristoe and Conant the facts show, and you will probably admit, that they were futile. So far as Mr. Mahon is concerned, you are almost entirely wrong. When he refused to pass the cases was before the solicitor had rendered his opinion in favor of their payment.

Auditor Reynolds never passed a single case of his own volition. At the very time you were entertaining him he was visiting the commissioner of customs and arguing against the cases on every debatable point. He did all he could against them and only passed them when the commissioner of customs had decided in their favor and when after that he went to the Secretary of the Treasury and tried to get him to interfere to prevent their payment and was told to state the accounts.

That the Court of Claims was influenced by your appeals to Chief Justice Richardson is too puerile to require anything more than mention. That we were ever in such desperate circumstances as you state you represented to him is news to me. All this "outside" work of yours was futile and unnecessary. As I had charge of the cases, it should not have been done without my knowledge and consent. I do not believe in it.

You are pleased to say that I have never had any cases of any account but these inspector cases.

In reply I have to say that outside of the inspector cases I have had more in number and a greater variety of cases than yourself. You probably forgot my moiety, collector's commissions, French and American Commission, and Alabama Court cases, not to mention many others. You also probably do not remember that during the nearly fifteen years we have been together you have never argued a case in any tribunal where you were required to think

standing. You also mistake when you say I had my cases referred to the Court of Claims. I opposed it and only went there because I must, but when it was a necessity I did go there and won my cases.

I did not ask the help of as you would have done under like circumstances.

When I bought you out in the "inspector cases" I did not mislead *ar* deceive you, as you intimate. I very frankly stated to you my position. I had not long before divided several thousand dollars with you. You had devoted nearly all of your time to the settlement of the Cooke estate, which business was not within the terms of our partnership understandings. I said as you were so doing I thought you ought not to share equally with me in the proceeds of my work. Upon this basis the trade was made. I understood that in other matters we were to divide, as heretofore. You admitted that my claim was just, and I paid you $15,000 and relinquished to you all rights to any proceeds, which you said you intended to share with me, of fees from the Cooke assignment. I understood that you then assented to my suggestion that I was entitled to more than one-half of those fees and that out trade was made on that basis. Your insinuations that you relied upon me to make the trade for your benefit, that you had no means of knowing the number, value, &c., of the cases, and that I in any manner misled you, is , and that is a very mild characterization of it. You had every book, agreement, and paper necessary to a full understanding of the whole matter; you had then in your possession for more than two weeks, and I think you took some or all of them to your house. More than this, I offered to answer any question you might ask relative to them or the cases. If you did not understand the whole matter you alone are to blame. I did not suppose you were in need of my guardianship. Had I so supposed I should not have done business with you.

Your statement that you have lost thousands of dollars
I introduced
true but it is
ever lost it upon
dation or that I
to you upon any
business whatever
general introduction
them up, or they
purposes is
I gave them no
whatever and assumed no
or financial responsibility
than that which always follows
an ordinary introduction, the only exception to this was in the case of Mr. Hellen. I explained the whole matter to you; you thought it a good thing; you found the money. I was to have a share of our net profits and to bear my share of the loss,

if any. There was a loss and I have refunded my share of it to you, with interest.

As to your other personal claims I will now only say that I know of no time you have loaned me any considerable sum for any length of time that you have not been paid interest, and that I never until I heard it on the street that in the few instances you have endorsed for me you did not do it willingly. Since then your name has not been used for my benefit.

There are some reasons why it does not seem advisable for us to longer continue in business together. One of them is that you could have kept (as you assert) such a paper as your "Meditations" for three years in your possession and never have shown it to me or even verbally complained to me of the matters it contains, while you have freely talked to others of its subject-matter so that they have been to me about it. One of them said, "Don't you know that Cummings is no friend of yours? If you don't, you ought to, for he isn't." Another reason is that you are continually talking about my affairs, and not always in terms of praise. I have asked you to stop it and have assured you that they are not proper subjects . Your remarks have frequently come back to me. Some have said, "How do you stand it?" My reply has usually been, "That is Cummings; everybody knows him and how he talks." But the fact that you are with me gives these gissipy remarks of yours more value than they would otherwise have. It is now about three years since we have had a settlement. There are expenses paid and fees received that are not divided. I have tried every year for a settlement, but have been unable to secure it. Last week I it, and for the first time your complaint in person.

I have answered your complaints. I want a settlement, then an agreement as to pending business, and then I will gladly arrange as to the occupancy of the office.

Will you co-operate with me in this?

Very respectfully,

(Signed) HENRY M. BAKER.

EXHIBIT H. M. B. No. 12.

WASHINGTON, D. C., *Aug. 13th*, 1889.

H. S. Cummings, Esq.

DEAR SIR: I am in receipt of your letter of yesterday. So far as it relates to the past I find nothing new in it.

Your statement of what you allege I said three years ago is scarcely more than a repetition of your so-called "Meditations," but when you say I practically admitted the other day your "above facts" you are very much mistaken. I did do nothing of the kind. I do not now. I do very distinctly remember that you tried to get me to advise you which of several ways would be the best for you and that I very positively refused to do so. I said, Here are all the books and papers; you must decide for yourself. If you wish to ask me anything about them I will gladly answer you. I did an-

swer all such questions which you asked. You really asked none. You may remember that more than once I asked you if you needed any explanation. When you intimate that I did not tell you the truth, or that I misled you, you intimate that which is false. If you did not possess all the information needful it was wholly your own fault. You never asked to see a single paper which was not shown you. You never asked any information which I did not honestly give you. There have been more allowances than I anticipated. I am not blamable for that. Had they been less would you have been either legally or morally liable to return to me part of the purchase-money I paid you? You must here remember that you, according to our agreement, had not only $15,000, but all the fees from the Cooke estate, which, if they have not amounted to from $10,000 to $20,000, you have yourself alone to blame.

Again you say, "I most certainly was misled; whether knowingly or intentionally on your part you can the best judge."

You say you was misled. That may be, but when you intimate that I did it in any manner you do not suggest the truth. If your imagination was as vivid then as — now is it would not be strange that it led you very far astray.

When you seek to excuse yourself for your long delay in calling my attention to your alleged "misleading" you really admit that your only cause of grief it that I have made more money out of the cases than you supposed I would, and seemingly forgot to admit that you told others of it months ago, and only told me when I insisted upon a settlement of the expenses paid and fees taken in other cases since I bought you out in the inspector cases. Do you seek to pay your honest debts by complaints which are not current anywhere?

You say I talked to you early in 1888 of the inspector cases as "our cases."

I certainly never intended to so express myself. I have no remembrance of ever doing so. If I did, you must have thought I spoke inadvertently or you must have supposed I had lost my senses or you were not in your right mind. Certainly, never since I bought and paid you for all your right, title, and interest in and to them, past, present, and future, I have never supposed for an instant that you had any more financial interest in them than the King of the Cannibal Isles. You have no more claim upon them than you have upon the hat I wear, which I paid for and not you, seemingly not so much, even, for I paid you for the cases, though you had hardly lifted your hand to get or to win them; for the hat I paid another.

When you say I spoke of the fees to be obtained from those cases after 1886 as "our fees" you say that which I positively deny. I never thought so. I could not have said it, for I did not believe it.

You say you went to Ass't Sec'y Maynard three times at my earnest solicitation and add, "I think I earned a good fee for my services in the single matter of the drafts." That you rendered such service I very gladly admit, as I do that in my absence you rendered some other brief services for me in those cases. If you will present

a reasonable bill for such services I will very gladly allow it upon the settlement I have been trying for more than two years to get. Lest you may be apprehensive, I will say here and now that I have no charge against you for any services I may have rendered you during your absence or otherwise in connection with the Cooke estate.

As you admit you have talked about me, I have nothing more to say now on that topic, except that I should have much preferred that you had told your stories to me than about me. It certainly could have been no great inconvenience to have done so, as we occupy the same office.

As you have assented to my proposition for a separation as soon as we have a settlement, that may be regarded as determined.

As to a settlement, I fail wholly to comprehend the fairness or logic of your suggestions. Do you mean to say that because I bought you out and paid you for all your rights to fees in my inspector cases that you are entitled to the whole fees in your cases where you never did buy me out? Does the fact that I was honest with you and paid you $15,000 in cash and relinquished certain matters which you said you were to divide with me destroy my rights in cases for which I was not paid and which I did not relinquish? If that is not your view of it, why do you propose to call everything "square to date" and to take your cases "without paying me for my interest in them"? Am I not just as much entitled to share in them since 1886 as in 1885? Please state why I am not entitled to be paid at least one-half of the fees in the Alabama cases I won and you collected; also why I should not be refunded one-half of the office expenses paid by me in excess of the amount paid by you? I have paid over $1,100 of such expenses. How much have you paid? Why should not I share in the fees in the Hoboken Land and Improvement Co. case which you won and I settled? Again, why should I — share in the Huestis case (if *one*) more than in the lost time or insurance cases when paid?

Whether or not I have "made money" has nothing to do with this matter. In matters of sentiment or generosity I will meet you more than half way. We should settle like men. I think we should sit down together and talk the whole matter over in the spirit of fairness and kindness. We should endeavor to harmonise and agree by ourselves. When will you devote the necessary time to it, today or early tomorrow?

When we have settled and closed our so-called partnership business, then probably one or the other of us will retain the present office. I wish now to call your attention to the facts that I have much more to move in the office than yourself; that I am ready to buy at fair prices such articles as you have there that can be of use to me, which you may wish to sell; that I personally occupy another room in the building, and that for other obvious reasons it will be more convenient for you to move than myself, and hence that I prefer to arrange with you for the office.

Very respectfully, —— ——.

Decree for Accounting and Reference to Auditor.

Filed Mar. 16, 1894.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS } Equity. No. 12263.
vs.
HENRY M. BAKER. }

This cause coming on to be heard upon the bill, answer, and testimony, and being argued by counsel, upon consideration thereof the court doth this 16th day of March, 1894, adjudge, order, and decree as follows:

1. That the agreement and receipt dated the 6th day of *of* September, 1886, in the bill and proceedings mentioned be, and the same is hereby, cancelled and annulled.

2. That the plaintiff is entitled to an accounting by the defendant of the fees received from all the so called inspector cases embraced in and covered by said receipt and agreement, said accounting not to include fees for business received by the defendant after the dissolution.

3. That there be also an accounting of and concerning all the other partnership matters (other than the said inspector cases not embraced in the said receipt and agreement); and in stating the account the defendant is to be allowed one-half of all the fees and commissions which the plaintiff received or reasonably should have received by reason of the assignment of H. D. Cooke & Co.

4. That this cause be referred to the auditor to take and settle the aforesaid partnership accounts, and in the execution of this reference he shall consider the evidence already in the case and such other evidence offered by either party which the auditor may deem relevant and pertenant.

5. That the auditor shall give to the parties due notice of the time and place of executing this reference, and shall report his proceedings under this decree to the court for its action.

It is further ordered and decreed that in stating the account of fees there shall be deducted from the amount received by each party such sums as were properly paid by such party to other attorneys, together with such other proper expenses as may have been incurred by the parties respectively in the conduct of the partnership business; and in stating such accounts the auditor shall compute interest upon the respective balances from the date of dissolution of the partnership.

A. B. HAGNER,
Asso. Justice.

Order of Court of Appeals Allowing Appeal.

Filed Apr. 4, 1894.

In the Court of Appeals of the District of Columbia.

HORACE S. CUMMINGS, Complainant,
vs.
HENRY M. BAKER, Defendant. } No. 12263.

To the Court of Appeals of the District of Columbia:

Your petitioner, Henry M. Baker, respectfully represents that he is the defendant in the above-entitled suit in equity, No. 12263, in the supreme court of the District of Columbia; that the object of said suit is, first, to have the court set aside a settlement between the complainant, Cummings, and your petitioner of transactions involved in a partnership of which said Cummings and your petitioner were members; and, second, to have the partnership accounts thus reopened settled under the direction of the court.

II. On the 16th day of March, 1894, a decree was made in said cause setting aside said settlement and referring the cause to the auditor of the court to state the partnership account between said Cummings and your petitioner. A copy of said decree is hereto appended.

III. The amount claimed to be due from your petitioner to said Cummings on account of said partnership matters is about twenty-five to forty thousand dollars. The taking of said account will necessarily involve considerable delay and much expense. Your petitioner is advised that it is doubtful whether he has any absolute right to appeal from said decree to this court. In order, therefore, that the rights of both parties may be protected and the main question in the case—the validity of said settlement—may be speedily determined, the petitioner prays that an appeal from said decree of March 16th, 1894, may be allowed by this court.

HENRY M. BAKER.

A. S. WORTHINGTON,
S. R. BOND,
Solicitors for Defendant.

I, Henry M. Baker, on oath say that I have read the foregoing petition by me subscribed and know the contents thereof; that the statements therein made are true to the best of my knowledge and belief.

HENRY M. BAKER.

Subscribed and sworn to before me this 31st day of March, 1894.

[SEAL.] WM. M. SMITH,
Notary Smith.

In the Court of Appeals of the District of Columbia.

Upon consideration of the facts of the within application it is ordered by the court this 4th day of April that the appeal be allowed as prayed.

Per curiam:

R. H. ALVEY, *Ch. Justice.*

A true copy.
Test: ROBERT WILLETT, *Clerk.* [SEAL.]

Bond for Appeal to Court of Appeals, District of Columbia.

Filed Apr. 4, 1894.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } No. 12263. In Equity.

Know all men by these presents that we, Henry M. Baker, as principal, and Benjamin B. Bradford, as surety, are held and firmly bound unto the above-named Horace S. Cummings in the full sum of two hundred dollars, to be paid to the said Horace S. Cummings, his executors or administrators or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 4th day of April, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas the above-named Henry M. Baker has prosecuted an appeal to the Court of Appeals of the District of Columbia to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the above-named Henry M. Baker shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY M. BAKER. [SEAL.]
BEN. B. BRADFORD. [SEAL.]

Sealed and delivered in the presence of—

——.

Approved the 4th day of April, 1894.

A. B. HAGNER,
Justice S. C. D. C.

DISTRICT OF COLUMBIA, *ss:*

Ben. B. Bradford, surety in the bond to which this is attached, swears that he is the owner of real and personal property situate in

said District of the value of ($1,000) one thousand dollars over and above all debts and prior obligations, and that he resides at No. 1764 K street N. W., Washington, D. C.

BEN. B. BRADFORD.

Subscribed and sworn to before me April 4th, 1894.

FREDERIC S. DOYLE,

[SEAL.] *Notary Public, D. C.*

Stipulation.

Filed Apr. 19, 1894.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS *vs.* HENRY M. BAKER. } Equity. No. 12263.

It is hereby stipulated and agreed that the record for the Court of Appeals need contain only the pleadings, testimony, exhibits, and decree passed March 16, 1894, and that the clerk in making up said record may—

1. Omit making a full transcript of Exhibit H. S. C. No. 1, and say: Exhibit H. S. C. No. 1 consists of 10 Treasury warrants and 102 drafts issued thereon in inspector cases to the different claimants, dated August 23, 1886, and subsequently collected by the defendant by virtue of powers of attorney from said claimants, amounting to $131,185.63.

One of said warrants is as follows, the other- being similar, but differing as to amounts and names of claimants, viz:

(Copy one warrant.)

One of said drafts is as follows, the others being the same except as to the amount and name of payee, viz:

(Copy one draft.)

And the following is a list of the payees and amounts of said drafts and the dates of payment marked thereon, viz:

(Making list as follows:)

Names of payees.	Amounts.	Dates of payment.

2. Omit making a full transcript of Exhibit H. S. C. No. 2, and say:

Exhibit H. S. C. No. 2 consists of copies of 147 letters written by the defendant to the first auditor of the Treasury, transmitting

powers of attorney in inspector cases and requesting the settlement of claims.

On the backs of said letters is noted the amounts allowed during the years 1888 and 1889 on the claims presented by them, aggregating the sum of $212,054.06, and at the foot of the letters is noted the dates of the allowances.

One of said letters is as follows, the others being similar, but differing in date and names of claimant-:

(Copy one letter.)

And the following is a list showing the names of claimants, dates of letters and amount of the settlements endorsed thereon, and dates of allowances as noted, viz:

Insert list as follows:

Dates of allowance.	Names of claimants.	Dates of letters.	Amounts endorsed.

3. Omit making a full transcript of Exhibit H. M. B. No. 1, and say:

Exhibit H. M. — No. 1 is a printed document of 276 pages, called "Executive document No. 70, House of Representatives, 49th Congress, 1st session," of which the title page and pages 13 and 14 and last page are as follows:

(Copying said pages.)

4. Omit making a full transcript of Exhibit H. M. B. No. 2, and say:

Exhibit H. M. B. No. 2 is a printed document of 94 pages, called "Executive document No. 225, 49th Congress, 1st session," of which the title page and pages 6 and 7 and last pages are as follows:

(Copy these pages.)

And say: Ink and pencil marks are made on said pages 13, 14, 6, and 7 as are on the exhibits.

5. Omit copying Exhibit H. M. B. No. 5, filed May 15, 1893, and say:

Exhibit H. M. B. No. 5, filed May 15, 1893, is a list of cases made by complainant as those of which he had charge and which were pending at the date of dissolution of the partnership.

6. Omit copying exhibit marked H. M. B. No. 1, filed May 15, 1893, and say:

Exhibit filed May 15, 1893, and marked H. M. B. No. 1, is a printed report, in shape of a circular letter, made by complainant under date of January 12, 1886, as assignee of H. D. Cooke & Co., showing the progress made in the matter.

7. Omit the letter-press sheets of letter of defendant, marked H. M. B. 10, and use the copy marked H. M. B. 11, bound with his testimony.

And it is further stipulated and agreed that on the argument in the Court of Appeals counsel for either party may use or refer to any of the papers and exhibits which are in the case in the court below, or copies of the same, and the figures of aggregates as given in items 1 and 2 above are subject to correction if not correct.

April 19, 1894.

FRANKLIN H. MACKEY,
Sol. for Complainant.

S. R. BOND,
Solicitor for Defendant.

Filed Apr. 20, 1894.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
v.
HENRY M. BAKER. } In Equity. No. 12263.

Opinion of Justice A. B. Hagner.

This case was submitted at the end of the July term. After a very thorough examination of the law and testimony, I prepared a decree which was almost identical with the one I shall now sign. But upon further reflection, finding I was unable to rid myself entirely of doubts upon some of the important questions involved, which had not been particularly argued by counsel, I ordered a reargument upon these points. This, on both sides, has certainly been very exhaustive and able.

I shall not now attempt an elaborate examination either of the law or the facts, but shall endeavor to express my conclusions in the briefest manner consistent with the importance of the case.

First. The first question for consideration is whether the bill presents a case calling for equitable relief, assuming its statements to be true.

A careful examination of its averments in the light of the decided cases has satisfied me this question should be answered in the affirmative.

If the transactions therein narrated had taken place between parties holding no relation of trust or confidence toward each other, it may be conceded these conclusions would not be perfectly clear. But this controversy grows out of dealings between copartners, with respect to the common property of the partnership, belonging equally to each; and the universal voice of the equity courts declares that such transactions should be examined with the most careful scrutiny, and determined according to the strictest principles of the law.

Justice Story states this position in these words:

"Good faith not only requires that every partner should not

make any false representations to his partner, but also that he should abstain from all concealments which may be injurious to the partnership business. If, therefore, any partner is guilty of such concealment, and derives a private benefit therefrom, he will be compelled in equity to account therefor to the partnership.

"Upon like ground, where one partner who exclusively superintended the accounts of the concern had agreed to purchase the share of his copartner in the business for a sum which he knew from the account in his possession, but which he concealed from him, to be for an inadequate consideration, the bargain was set aside in equity as a constructive fraud; for he could not in fairness deal with his other partners for their share of the profits of the concern without putting them in possession of all the information which he himself had with respect to the state of the account and the value of the concern."

Story on Partnership, § 172.

To the same effect is the conclusion of the learned author in 2 Lindley on Partnership (chapter 2, book 3, page 569), who, after a review of all the authorities, holds that between copartners, of all men, there should ever be maintained *uberrima fides*, and that "one who seeks to benefit himself at the expense of his partner must have his conduct tried by the highest standard of honor." (Lindley, 771.)

Without pausing to refer to the very numerous cases cited by counsel, or to the many others that have come under my observation, I will content myself with quoting from the language of the Supreme Court in 2 Wall. 70, Brooks *v.* Martin:

"We lay down then, as applicable to the case before us, and to others of like character, that in order to maintain such a sale (by one partner to another) it must be made to appear, first, that the price paid approximates reasonably near to a fair and adequate consideration for the thing purchased; and, second, that all the information in possession of the purchaser, which was necessary to enable the seller to form a sound judgment of the value of what he sold, should have been communicated by the former to the latter."

Tested by the principles, there can be no doubt the bill presents a case which, if sustained by the proof, and found free from other objections, will justify a rescission of the assignment from Cummings to Baker of the 6th of September, 1886, and a decree for an account.

It is true the cancellation of an executed contract is the exercise of one of the highest powers of a court of equity, which should only be exerted upon satisfactory proof; but the cases exhibit repeated instances of the exercise of such an authority. If the court should allow the wrong-doer to retain possession of property obtained from his copartner under circumstances denounced by the principles I have referred to, it would effectively justify the wrong, by taking the side of the wrong-doer.

Second. The prayer of the bill in this cause explicitly called on

"the defendant to answer without oath"—"expressly waiving an answer under oath." The defendant, nevertheless, with equal explicitness, declined to "avail himself of the permission accorded by the bill to answer without oath;" and his answer is verified in the usual manner.

The defendant insists an answer cannot be deprived of its force as a pleading and evidence accorded by the principles of chancery practice, by such waiver on the part of the complainant; and that his right to the benefit of his sworn answer remains unaffected by any statement of this nature the complainant may see fit to make.

Our chancery rule 63, which is similar to the rule of the Supreme Court on the subject, declares that after such waiver by the complainant the answer shall not be evidence in the defendant's favor unless the cause be set down on bill and answer only; but that it may be used as an affidavit with the same effect as heretofore on motions respecting injunctions, or other incidental motions.

The defendant relies on the remark of Chancellor Walworth, who prepared the law to this effect passed by the legislature of New York, that its establishment was "the adoption of a new principle of law," and he insists a mere rule of court can have no power to deprive him of his previously existing rights in this particular, in the absence of similar legislation by Congress.

Without pausing to recapitulate the points of the contention on both sides, I will content myself with saying that, after full consideration of the arguments, I think our rule was established by competent authority, and that our uniform practice under it since its adoption has been entirely justified.

The answer of the defendant, therefore, at this stage of the case cannot be regarded as evidence, any more than the averments of the bill itself can be so considered.

Third. Are the essential averments of the bill sufficiently established by the testimony?

The only witnesses as to the most important of the charges are the complainant and the defendant; for the testimony of Lease and Wilson is of little moment. This evidence is to be considered in connection with the numerous writings and documents referred to by each side, and according to the usual rules for weighing such testimony.

The parties are alike interested in the result; they are members of the same profession; for years they were friends and copartners; they appear to be of equal intelligence and education; and their associations and aims seem to have been similar.

In some few important parts of their testimony they are directly in opposition; but in others, of equal importance, there are such agreements in their evidence as may be said to amount to mutual admissions on the following points:

a. That Baker had the principal charge of the inspector cases, almost to the exclusion of Cummings; indeed, Baker relies upon this fact as an important reason why he was equitably entitled to a larger share of the profits arising from their prosecution. He testi-

fies he had done so much more than Cummings that he had become tired of doing all the work for only one-half of the fees.

b. That Baker, as the result of this exceptional labor in the cases, had acquired a far greater acquaintance and familiarity with the business than Cummings, and especially of its extent and value. Baker resents the intimation of Cummings that this constant work about the cases required no great skill or learning, by pointing out the difficulty and important character of the work thus devolved upon him; some of which, as arguments in court and elsewhere, he insists Cummings was not qualified to perform.

c. As a matter of fact, in the distribution of the firm business, the inspector cases were left to Baker to prosecute and collect the money, and, except in a few instances, to deduct the fees and remit to the claimant. He insists the discovery of the alteration in the statute was due to him, and that the suggestion to undertake the prosecution of the claims also came from him.

d. That Baker began to talk about the dissolution of the partnership early in 1886; and that the first suggestion that Cummings should sell his share in the inspector cases was made by Baker, who insisted there should be a dissolution unless Cummings would agree to sell out his share.

e. They differ as to the statement of Cummings that Baker said the fees already collected and not divided did not exceed $22,000, and that the total amount to be collected on unadjusted claims would not exceed $80,000. But Baker admits he told Cummings that $15,000 was "more than he ought to pay," and "more than he could afford to pay," for Cummings' entire interest in all the fees present and in anticipation.

f. That the fees actually earned, but not paid over, amounted to..... $32,971 57
From which was to be deducted fees due to other attorneys, amounting to..... 1,488 00

Leaving the net balance..... $31,483 57
Which would give to each partner..... 15,741 78

or $741 more than the sum Baker said he could not afford to pay Cummings in settlement of his half of those fees then in hand; and it is also proved that the one-half of the fees to arise from the $275,000.00, the aggregate of the claims yet to be collected, would amount to about $35,000.00. Supposing the same proportion (about $2\frac{1}{2}$) of these fees was payable out of this sum to other attorneys, the $35,000.00 would be subject to be reduced by about $1,600.00, leaving the net proceeds from this source $33,340.00; which would represent the amount, on these figures, Cummings contends he gave away to Baker for nothing, beyond the relinquishment by Baker of one-half of whatever he was entitled to receive from the Cooke estate, which Baker had long before declared he did not intend to claim.

g. That about $128,000.00, deposited at different times at Corson & McCartney's bank by Baker & Cummings, arose only out of these

inspectors' claims; that it all was placed to the credit of Baker, and that the claimants, for the most part, were paid through checks on that fund, which, therefore, was practically to be regarded, as to this transaction, as a partnership account.

h. That up to the time of the assignment the most intimate relations existed between the partners, and that Cummings, up to this time, placed implicit faith in the integrity and friendship of Baker. Cummings' testimony that he had as much confidence in Baker at the time as any man living, and that he would have entrusted his entire estate to him during years of absence out of the country without hesitation, is quite consistent with his repeated requests to Baker to advise him as to what sum he thought he ought to take for his half. To none but a most trusted friend could a man have agreed to submit the naming of the price he ought to receive for the sale of his property to that friend.

i. That the $15,000.00 received by Cummings as the entire price of this sale was nearly all paid out of the money Baker had already received for fees then actually due to Cummings; and that within a short time the residue, making up the entire $15,741.78, was realized from money collected by Cummings between the 7th and 29th of September, 1886, and by Baker after his return to the city, all of which went to the same account with Corson & McCartney's bank.

In effect, therefore, every cent Cummings received on the sale came from his own money already earned by him; much the greater part of which Baker ought to have turned over to Cummings before the 6th of September, 1886, when the agreement was signed.

Cummings thus by the admission of the parties, parted with a property interest of almost $50,000.00 in exchange for $15,000.00, paid to him out of his own money already earned. In view of these established facts, can it be said of this transaction that the first postulate laid down by the Supreme Court as indispensable to maintain a sale of a partner's interest in the partnership estate to his copartner is shown to exist; namely, that it "appears the price paid approximates reasonably near to a fair and adequate consideration for the thing purchased"?

Is it within the bounds of credibility that Cummings, if he had known the value of what he was asked to assign, could have been stupid enough to have parted with it so needlessly, for so disproportionate a consideration?

Fourth. The second condition requisite to maintain in a court of equity a sale by one partner to another, according to the decision in Brooks *v.* Martin, is the proof "that all the information in possession of the purchaser which was necessary to enable the seller to form a sound judgment of the value of what he sold" had "been communicated by the former to the latter."

How stands the proof as to this requirement?

The bill charges the proposition that Cummings should sell out his interest in the inspector-cases fees was renewed repeatedly by Baker, who declared that if Cummings did not agree to sell out he would insist upon the immediate dissolution of the firm; that Cum-

mings protested he knew very little about the amount of the claims, or of the probable fees, and was, therefore, really ignorant as to what his interest was worth; that he called more than once upon Baker to give him the information he needed, and begged him to advise him as to what he ought to do with respect to the sale.

It further avers that "at one of those conversations the defendant handed to the complainant a bundle of papers which he said contained information upon which the complainant could ascertain the value of the said interest, but upon examination of said papers the complainant was unable to gather therefrom any adequate information without the aid and explanation of the defendant; and thereupon the complainant, knowing that the defendant well knew all the facts, and reposing that confidence in him which the association of many years of professional and business relations had created (besides being entitled, as the partner of him, the said defendant, to be put in possession of all the knowledge which the defendant had acquired in the prosecution of their joint business), requested the defendant to inform the complainant, first, as to the amount due the firm on account of fees which were earned in said inspectors' cases, and for which appropriation had been made by Congress; and, second, the amount of claims not then appropriated for by Congress. And the defendant then and there stated to the complainant that the amount of fees earned and payment of which was already provided for by act of Congress was but the sum of twenty thousand dollars ($20,000.00), and the amount of all other claims of said inspectors' cases, not then appropriated for, would be about $80,000.00, in which said last-mentioned cases the expected fee to accrue to the firm would be about $20,000.00."

"And this complainant avers that, relying on the deliberate statement of his said partner, the defendant, in relation to this branch of their joint business, which had been within the defendant's exclusive control, as aforesaid, for so long a time, he, the complainant, returned the said papers to the defendant, and stated to him that he would be willing to accept defendant's offer and to assign and receive as and for his interest in fees in all of said cases as follows: That is to say, of twenty thousand dollars of fees already within the congressional appropriation, one-half thereof, to wit, the sum of ten thousand dollars ($10,000.00), and for the remaining cases (unappropriated for) the further sum of five thousand dollars ($5,000.00), or in all the sum of fifteen thousand dollars ($15,000.00), which offer complainant was induced to accept solely by means of the said representations of the said defendant."

To these averments Baker replies that on the occasion referred to he gathered together and gave Cummings the various papers, enumerated on page 16 of the record, stating to him that any information requisite to their full comprehension would be furnished by him; that Cummings kept these papers more than two weeks before the assignment was made; that he has no doubt Cummings fully understood everything of importance on the subject at the time; that he dealt with the complainant with perfect fairness, and if Cummings did not understand everything it was his own fault;

that when Cummings returned the papers he told defendant he hardly knew what to say, and asked defendant's advice as to what he should do, which he distinctly refused to give, telling him they were trading, and he must rely on his own judgment; that the next day Cummings came to the office and said he had been thinking over the matter, and if Baker would give him the $15,000.00 he would trade, to which he replied, "it was more than he could afford to pay," but that, to end the matter and have an end to the whole thing, he would give it to him.

The representations of the two parties are in substantial accord as to the nature of the papers Baker delivered to Cummings; as well as to Baker's omission to show or deliver to him the schedules marked "H. M. B. No. 3."

It is admitted that, for several weeks before the bargain, Baker had been using in the office those schedules, which contained the names of every one of their clients whose claims were comprehended in the last appropriation of Congress, with a memorandum of the amount to which they were each entitled; of the fee due the copartnership in each case, and of the proportion of that fee payable to other attorneys. Under appropriate headings Baker had also noted from time to time, opposite to each name, the date of the receipt of the moneys; of the remittance to each claimant, and of the amount sent to each.

It is clear Baker never showed this schedule to Cummings until after the assignment had been executed and delivered to Baker, and the check for $15,000 had been given by him to Cummings. Baker testifies this took place on the 7th of September, just as he was about to leave the city. He then told Cummings that some of the drafts payable under the last appropriation had not yet been collected, and requested him to receive the amounts, deposit them in the bank and make the settlements for them with the claimants, from time to time, until his return to the city. For this purpose he handed Cummings a number of checks he had signed in blank on Corson's bank, which Cummings was to fill up with the name of the several claimants, as the drafts for their claims should come to hand, and transmit them to the parties entitled. Cummings complied with this request, and from day to day, from the 7th to the 29th of September, filled out the checks in his own handwriting and sent them to the claimants; noting on the blank spaces left in the schedules the several particulars as to dates and amounts, in the manner Baker had previously done in the other cases. On Baker's return Cummings returned him the schedules and Baker proceeded to complete the entries as to the remaining claimants until the paper was complete, as it now appears.

The schedules show that Baker had commenced the entries as early as the 30th of August, and he says he had prepared the schedules before those entries were made. And yet, though he professes to have wished Cummings to understand everything connected with the amount of those claims, and of the fees, he neither delivered to him the schedules nor showed them to him until the 7th of Sep-

tember, when he needed the assistance of Cummings to complete the settlement with the claimants.

It is apparent it would have required considerable research on the part of one unfamiliar with the history of the claims to prepare for such settlement with the claimants if he had only the budget of papers delivered by Baker to rely upon. But the schedules would enable Cummings, without any delay and study, to obtain the knowledge to settle with the claimants, independent of all the other sources of information specified by Baker in his answer, which were already under Cummings' control.

If the other papers first confided to Cummings would have sufficed for this purpose, why did Baker, for the first time, intrust Cummings with the schedule? What tenable reason could be given why the purchasing partner, especially acquainted with these claims, if he had wished Cummings to arrive at an easy understanding of the amount, date, and particulars of the several claims before the assignment, should have refrained from handing those schedules to Cummings with the other papers, or instead of them? Under the circumstances, during the negotiation, hearing the repeated statements of Cummings of his ignorance of the business, Baker should have volunteered—indeed, insisted—upon showing and explaining the schedules to Cummings, who he knew was ignorant of the details of the claims, and almost of their general condition.

His refusal to show the schedule to Cummings subsequently, when requested by him after the dissolution, exhibited a similar disregard of his copartner's rights, and tends to explain his previous conduct.

If the other papers given by Baker to Cummings were adequate in Cummings' hands to a full understanding of the claims, they would have been equally instructive to Baker, and it would have been needless for him to have to prepare the schedules at all. If he prepared the schedules because the undigested mass of books and papers were not adequate in form for ready use by Baker himself, without such an abstract of their contents, which was undoubtedly the fact, then it was clearly his duty to have given the schedule to his copartner, his equal in every right by the terms and law of the partnership, and the co-owner with him of every dollar of the fees present and prospective.

Even if this withholding of the schedules had been only the result of carelessness and lack of appreciation of the importance to a full comprehension by Cummings, the act was a grave omission, and constituted a neglect of a plain duty required of him under the circumstances that would bar the approbation of the assignment by the court.

His declaration that $15,000 was "all he ought to pay," or "could afford to pay," uttered by one partner to another about a subject with which he was presumably familiar, cannot be regarded merely as the *simplex commendatio* of a seller in an ordinary bargain and sale, even between strangers dealing at arm's-length, but must be considered as a distinct assertion of his belief; which, as was said by Judge Story in Stubbs *v.* Eddy, 4 Mason, 423, "is an affirmation

of a fact, that is, of the fact of belief; and if it is fraudulently made to mislead or cheat another, to abuse his confidence, or blind his judgment, it is in law and morals just as reprehensible as if any other fact were affirmed for the like purpose. The law looks not to the nature of the fact averred, but to the object and design of the affirmation."

But if it be true that Cummings, by an attentive examination of the papers entrusted to him by Baker before the assignment, might have informed himself fully of the true state of affairs, that fact would not have atoned for any misrepresentations on the part of Baker, which were confided in by Cummings and made the basis of his action. If, as between strangers, a statement of importance relied on by the vendee and controlling his actions, proves to be incorrect, the seller cannot escape the consequences by saying, "What I said was false, but you ought not to have believed me."

Battelle *v.* Dennison, 20 W. L. Rep., 624.

Redgraves *v.* Hine, 20 Ch. Div., 1.

A multo fortiori, should this principle apply between partners, since the relations of trust and confidence naturally have a powerful tendency to disarm suspicion?

I have not time to advert to many considerations of importance arising out of the testimony. Among them is the fact that the payment was made by Baker to Cummings out of his own money deposited with Corson & McCartney in what was really a copartnership account. A similar circumstance was greatly relied upon in Helmere *v.* Smith (35 Ch. Div., 436), where a partner bought at a sheriff's sale a chattel interest of a copartner in the partnership, and paid for the purchase by a check drawn on the partnership account.

Lindley, the author of the celebrated treatise on Partnership, who was one of the justices sitting in the case, said:

"What makes this case particularly easy is this: When the sheriff sold under the *fi. fa.* to the continuing partner, he did not pay the money out of his own monies, but paid for the purchase out of the assets of the partnership."

Fifth. It remains to consider whether the delay of the complainant in instituting this action constitutes such laches as should debar him from recovery. The sale was made on the 6th of September, 1886. Cummings testifies he did not arrive at the conviction that imposition had been practised upon him until two years and eleven months afterwards, in August, 1889. The partnership relations between them were then still in existence; but the dissolution took place immediately afterwards, in September, which was fully three years after the sale. It was not until February, 1890, six months after the discovery and three years and five months after the assignment, that the bill was filed in this case.

It is for the best interest of society that controversies should be adjusted speedily, and the statutes of limitations are framed to compel the enforcement of this principle by courts of law. And courts of equity, which are moved to interfere, as a general

rule, only in behalf of those who have not slept on their rights, require the exhibition of proper diligence in their assertion, and will demand a reasonable explanation for any undue delay.

Were these delays unreasonable under the circumstances?

The determination of the question whether the delay in any given case was reasonable, or the reverse, must depend upon its own circumstances. Courts of equity have sustained bills brought after three or four times as long a delay as that appearing here, while in other cases a much shorter interval has been considered as immoderate, and has been sustained as a sufficient defence on the ground of laches.

Cummings admits that soon after he had made the assignment doubts arose in his mind whether he had not been imposed upon; but he swears that his confidence and great reliance upon Baker caused him to silence the expression of those doubts as often as they occurred to him, until August, 1888. He testifies that shortly after he had signed the assignment he reduced to writing his doubts and beliefs in the paper called "Thoughts and Meditations," which he first showed to Baker nearly three years afterwards, and a copy of which has been offered in evidence by the defendant.

The paper would not have been admissible on the offer of Cummings, but was quite competent when introduced by the defendant as a declaration by Cummings.

Its statements are damaging in different particulars to each side. Assuming its statements to be candid and contemporaneous, it is conclusive proof that Cummings entered into the bargain with misgivings of its wisdom, insisting he saw no reason why he should not be equitably entitled to as much of the fees as Baker, and that he thought Baker was acting selfishly in insisting upon the sale as the condition on which the partnership should continue.

On the other hand, it is filled with his asseverations that these doubts had yielded to the force of Baker's assurances of the moderate amount of the claims and of the fees the copartnership was likely to realize from them after deducting fees to other attorneys and expenses; that he believed these statements solely because of his implicit belief in Baker's integrity and his confidence in his *his* truth and honor; and that relying upon Baker's deliberate statements, and wholly because of his faith in him, he had concluded to comply with his urgent application, which, in view of the threat to dissolve made to a man shown to be then in embarrassed circumstances from his building engagements, might well be considered as an exigent demand, not to be resisted with safety to himself in his business relations.

In this frame of mind he claims to have accepted the situation in good faith, and after he had executed the assignment he proceeded to perform Baker's request to settle with the claimants then unpaid. It is true, he then had in his possession the schedules, and that a proper examination of them would soon have convinced him that Baker had greatly underestimated the amount of the fees already earned. Assuming Cummings confided in Baker's integrity, as he swears he did, Cummings' statement that he then reconciled the

discrepancy between the schedule account of fees and Baker's estimate to the alleged large deduction to be made on account of fees payable to other attorneys appears to be a sufficient explanation why Cummings did not at once repudiate the settlement because of that discrepancy. The copartnership still continued, although Cummings assumed thenceforth no management of the inspector cases. His testimony (supported by the other proofs) shows that during the session of 1886–'7 no appropriation was made by Congress respecting the payment of the deferred claims; and that the next law on the subject was passed on the first of February, 1888 (25 Stats., p. 28), when an appropriation was made of $73,226.76 on this account. Up to this date, therefore, nothing had occurred to put Cummings on inquiry as to the correctness of Baker's representation on that subject. Cummings swears that when this act passed he observed the sum so appropriated was so near the amount named by Baker, that assuming it was a full settlement of all the remaining claims, he accepted it as a verification of the statement of Baker, and again aided him in the collection of the money. But after March 30, 1888, he was astonished to find Baker had obtained an allowance of that date for $62,661.37 in inspectors' cases, in one appropriation bill, and a further allowance of more than $46,000.00 in another bill of the same date. He then saw that the deferred claims thus allowed already exceeded Baker's estimate by at least $28,000.00; and when, in October, 1888, a still further appropriation of $110,636.64 was made, the doubts and suspicions that had been growing in his mind became so strong that he began seriously to investigate the entire subject, including the amount of the fees involved in the settlement of September 6, 1886.

I think this explanation, verified as it is by the proofs in the case, sufficiently accounts for Cummings' delay up to this point; which accounts for the space of two years after the assignment.

He testifies that he at once entered on these investigations by obtaining from the Treasury all the information requisite to a full understanding of the cases, and this examination continued until late in the spring or early summer of 1889. About the 1st of August, 1889, having conclusively ascertained that the defendant had misrepresented the facts at the time of the contract, he immediately informed him of this discovery and demanded a full accounting. Receiving no satisfactory reply, he wrote him a letter on the 23d of August, 1889, begging replies to what appeared to have been very reasonable inquiries on the subject, and asking for information; to which Baker replied on the next day: "It is none of your business; I bought you out of these claims, horse, foot, dragoons, and all."

Up to this date, August, 1889, there had been no delay that is not satisfactorily explained. The intervening time between that time and February, 1890, when the suit was commenced, was occupied in further researches in the Treasury; in correspondence and interviews with Baker; in arrangements as to the dissolution, which occurred in September, 1889; and in discussion of a compromise. The five months thus employed do not constitute an unreasonable

delay in bringing the suit after the full conviction on his part of the wrong he has sustained. Ordinarily, no right exists on the part of a partner to demand an account of the partnership affairs until after a dissolution; for while each partner is exercising his own rights and enjoying his share of the property there is no occasion for litigation; and the complaint here is that the agreement that excluded Cummings from his full rights in a part of the copartnership affairs being unjust and void in law, he must be regarded as having been entitled to full participation in all its rights up to the time the partnership relations were actually severed.

There is nothing to show any loss of witnesses or destruction of books or other alteration in the relative positions of the parties caused by the delay to the prejudice of the defendant. His statement that he has no books of account to produce before the auditor does not show that this is the result of the complainant's delay to sue; for it is evident he would have said the same thing if the suit had been brought in October, 1888, if it be true he never had any such books.

If the complainant had slept on his rights so long that great and serious injury would result to the defendant because of the delay, culpable laches might be imputed to him. But almost the entire evidence on the accounting, except that of the parties, will be derived from documentary proofs still in existence and unimpaired.

The court will look with leniency upon delay caused by sincere efforts to induce a compromise and prevent litigation, especially where it appears the complainant's equity was well known to the defendant from the time of the settlement; and a party insisting upon the strict application of the doctrine of laches under such conditions will not be the object of special solicitude of the court.

92 U. S. 101, Neblitt *v.* McFarland.

For these reasons I do not think the delays of the complainant are of such a character, and are so free from reasonable explanation, that they can be imputed to him as culpabilities, disenabling him to maintain this suit.

I shall sign a decree annulling the assignment of the 6th of September, 1886, and ordering an account of the partnership affairs, with such limitations, and subject to such allowances to the defendant, as I think are right.

A. B. HAGNER,
Asso. Justice.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing to be a true and correct transcript of the record of all the proceedings had in said court under the stipulation filed April 19, 1894, in the cause wherein Horace S. Cummings is complainant and Henry M. Baker is

defendant, as the same remains upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 4th day of May, A. D. 1892.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 339. Henry M. Baker, appellant, *vs.* Horace S. Cummings. Court of Appeals, District of Columbia. Filed May 4, 1894. Robert Willett, clerk.

FRIDAY, *June 8th*, 1894.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 339.

The argument of this case was commenced by Mr. S. R. Bond, for the appellant, continued by Mr. F. H. Mackey and Mr. H. O. Claughton, for the appellee, and concluded by Mr. A. S. Worthington, for the appellant.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 339.

Opinion of Court.

The opinion of Mr. Justice Hagner, in the court below (adopted by the Court of Appeals and ordered to be filed with the opinion of this court, and in the report of the case to be inserted preceding the opinion of this court adopting the same); (which opinion will be found on page 208 of this record.)

Mr. Chief Justice ALVEY delivered the opinion of the court:

This case, it appears, was argued and reargued in the court below, and the learned justice who heard the case has given it very full and careful consideration, as is shown by his carefully prepared opinion contained in the record. Both the law and the facts are fully and clearly stated in that opinion, and upon careful examination of the whole case, we entirely concur both with the reasoning and conclusion of the learned justice.

The only questions that would seem to admit of serious discussion, and which were much discussed in this court, are those in respect to the application of the statute of limitations and the equitable doctrine of the lapse of time, pleaded and relied upon by the defendant. But those questions have been well considered and satisfactorily disposed of by the court below. Indeed it may be very much doubted whether any such questions properly arise in the case. It is very clearly shown, that the $15,000 paid over to Cummings by Baker on the assignment of the former's interest in the

inspector cases, was not in truth the money of Baker but was the money of the partnership of Cummings & Baker, deposited in the name of Baker; and that, in receiving the $15,000 as for his share or interest in the inspector cases, Cummings was in reality, and to all intents and purposes, receiving his own money, and not even the full amount due him, for and on account of the inspector cases previously earned, and actually realized or secured. This being so, the assignment of September 6, 1886, was not only voidable for misrepresentation and failure to make full and frank disclosures of the real state of the business, and the extent of the interest of Cummings therein, as held by the court below, but it was void from the commencement, and transferred no interest to Baker, because of the entire want of consideration—the $15,000 being received by Cummings in ignorance of his rights. If this view of the transaction be correct, and we perceive no reason to doubt it (Helmore *v.* Smith, 35 Chan. Div., 436; Brooks *v.* Martin, 2 Wall., 85), neither the statute of limitations, nor the doctrine of the lapse of time, as defences to the relief sought, would have any application. The assignment did not break up or terminate the relation of partners: but the partnership continued, not only with reference to the other business of the firm, but also with reference to the inspector cases; the assignment to Baker being without legal effect or operation. And that being so, and the partnership continuing until September, 1889, when it was dissolved, less than five months intervened from the time of dissolution to the time of filing the bill, on the 1st of February, 1890.

However, without insisting upon this view of the case, but treating the assignment as being voidable merely for misrepresentation and non-disclosure of material facts, we are of opinion that the court below was clearly right, and we shall affirm the decree appealed from for the reasons assigned by the learned justice in the court below. In either aspect of the case, the decree for an account was proper, and the basis for stating the account, as prescribed by the decree appealed from, is such as furnishes the appellant no just ground of complaint. The decree is affirmed, with cost to the appellee.

Decree affirmed, and cause remanded for further proceedings.

TUESDAY, *October 2d, A: D.* 1894.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 339. October Term, 1894.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs; and it is fur-

ther ordered that this cause be, and the same is hereby, remanded to the said supreme court for further proceedings.

Per MR. CHIEF JUSTICE ALVEY.

October 2, 1894.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the District of Columbia, Greeting:

Whereas lately, in the supreme court of the District of Columbia, before you or some of you, in a cause between Horace S. Cummings, complainant, and Henry M. Baker, defendant, equity, No. 12263, wherein the decree of the said supreme court, entered in said cause on the 16th day of March, A. D. 1894, is in the following words, viz:

"This cause coming on to be heard upon the bill, answer, and testimony, and being argued by counsel, upon consideration thereof the court doth this 16th day of March, 1894, adjudge, order, and decree as follows:

1. That the agreement and receipt dated the 6th day of *of* September, 1886, in the bill and proceedings mentioned be, and the same is hereby, cancelled and annulled.

2. That the plaintiff is entitled to an accounting by the defendant of the fees received from all the so-called inspector cases embraced in and covered by said receipt and agreement, said accounting not to include fees for business received by the defendant after the dissolution.

3. That there be also an accounting of and concerning all the other partnership matters (other than the said inspector cases not embraced in the said receipt and agreement); and in stating the account the defendant is to be allowed one-half of all the fees and commissions which the plaintiff received or reasonably should have received by reason of the assignment of H. D. Cooke & Co.

4. That this cause be referred to the auditor to take and settle the aforesaid partnership accounts, and in the execution of this reference he shall consider the evidence already in the case and such other evidence offered by either party which the auditor may deem relevant and pertenant.

5. That the auditor shall give to the parties due notice of the time and place of executing this reference, and shall report his proceedings under this decree to the court for its action.

It is further ordered and decreed that in stating the account of fees there shall be deducted from the amount received by each party such sums as were properly paid by such party to other attorneys, together with such other proper expenses as may have been incurred by the parties respectively in the conduct of the partnership business; and in stating such accounts the auditor shall compute interest upon the respective balances from the date of dissolution of the partnership.

A. B. HAGNER,
Asso. Justice."

As by the inspection of the transcript of the record of the said supreme court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-four, the said cause came on to be heard before the said Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs, and that the said defendant, Horace S. Cummings, recover against the said complainant for his costs herein expended and have execution therefor; and it is further ordered that this cause be, and the same is hereby, remanded to the said supreme court for further proceedings.

October 2, 1894.

You therefore are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Richard H. Alvey, Chief Justice of said Court of Appeals, the 19th day of October, in the year of our Lord one thousand eight hundred and ninety-four.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Costs of defendant paid by compl't.

[Endorsed:] Court of Appeals of the District of Columbia. No. 339. October term, 1894. Henry M. Baker, appellant, *vs.* Horace S. Cummings. Mandate.

In the Court of Appeals of the District of Columbia.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 565.

Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } No. 12263. Equity. Docket 30.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Report of the Auditor.

Filed June 18, 1895.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } No. 12263. Equity. Docket 30.

This cause is referred to me to take and settle the partnership accounts. After giving the parties due notice of the time and place of executing the said reference, I proceeded with the same, and I return herewith the testimony and exhibits offered and submitted in proof by the respective parties.

Upon the call of the auditor the defendant filed an account of his receipts and expenses in connection with the partnership business under the decree of the court, to certain items of which objections were made by counsel for the plaintiff. Some of these objections were subsequently withdrawn, leaving but a few of the items in controversy.

In Schedule A, I have stated an account as between the two partners, made up from the succeeding schedule, and to which reference will be made hereafter.

In Schedule B, I have stated an account of the defendant of the fees received in the inspector cases (so called), described in this proceeding and in the decree. The only controversy as to this portion of the amount is a claim by the defendant that he should not be charged in this accounting with the fees collected in two cases which were allowed and the fees collected after the dissolution of September 1, 1889. These are the two claims last mentioned in the debit side of this schedule. The powers of attorney were received respectively in February and July, 1889. Both of the claims were allowed in October, 1889, and both paid in 1890. I am of the opinion that these fees should be properly included in the charges against the defendant, and have so stated them in this schedule. He submits an alternative claim for extra compensation for services rendered in the prosecution and collection of these claims after the dissolution, which will be considered with the credit side of this account.

I have allowed all of the credits claimed by the defendant for moneys paid to other attorneys, for attorney fees and costs paid in suits for the recovery of fees, payments for clerk hire, stationery, postage, etc., and for travelling expenses; also for payments for services rendered before the committees of Congress and elsewhere in connection with these claims and the appropriations for their payment, the objections to this class of credits made by counsel for the plaintiff having been withdrawn.

A claim was presented by the defendant for compensation for personal services in obtaining, prosecuting, and collecting these inspector claims on the basis of the difference between one-half and

one-third of the net fees, which claim was subsequently amended by the substitution of a claim for personal services in obtaining, prosecuting, and collecting inspector cases subsequent to September 6, 1886, the amount so claimed being forty-two thousand seven hundred dollars, and against the objection of the plaintiff's solicitors I received evidence touching the extent and character of the said services as well as of their value, which testimony is returned with this report. This claim is presented and urged upon the ground that the decree annulling the sale of September 6, 1886, does not restore the status of the partnership as to the inspector cases, but only entitles the plaintiff to an equitable portion of the fees realized in the said cases, and that in the ascertainment of that portion the extra services rendered by the defendant in procuring, prosecuting, and collecting these claims after the date of the said sale and assignment and rendered in the belief that the plaintiff had no further interest in the said claims should be compensated for, especially as that belief was apparently acquiesced in by the plaintiff during the entire period. Cases are cited in which extra compensation has been allowed by courts to a surviving or remaining partner for services rendered in continuing and conducting the partnership business after the death or withdrawal of his copartner, but each of these cases is that of an absolute dissolution of the partnership relation. In this case, in my *my* judgment, the decree of the court annulling the assignment or sale has the effect of reinstating the partnership as it existed prior to that sale, as to the inspector cases, and to continue that partnership until the complete or general dissolution, in September, 1889. In this view of the case we must treat this claim of the defendant as that of one member of an active, existing partnership for an extra share of the profits realized from the joint business, on the ground of contributing to that business a greater amount of time and service than his copartner, a claim which cannot be maintained under any authority of text-writers or adjudicated cases, so far as my inquiry extends. I have therefore to exclude this claim from allowance in my account.

Referring to the claim of the defendant for extra compensation for services rendered after the dissolution in the two cases allowed and collected thereafter, I have to report that the evidence furnished does not disclose the extent of the services rendered after the dissolution of September, 1889, and I am unable to properly estimate the value of such services if the defendant were equitably entitled to such an allowance.

Of the net balance shown by Schedule B, each of the partners would be entitled to one-half. Against the share of the plaintiff and as a credit to the defendant I have allowed the sum of fifteen thousand dollars paid by the latter to the former on September 6, 1886. I have also allowed one-half of the fee to which the partnership would have been entitled in the case of the claim of Isaac G. Baker against the Government. It appears that this claim was in the hands of the plaintiff during the continuance of the partnership and was by him presented to the Court of Claims in the form of a petition, signed by the plaintiff as attorney-in-fact, and with the name

of Cummings & Baker as counsel. Subsequently the plaintiff transferred the said claim to another attorney, the original claimants making a contract with that attorney and giving him a power of attorney which he filed in the said Court of Claims, he then prosecuting the claim to a successful issue and receiving as compensation something like forty per cent. of the amount recovered, being twenty-one hundred dollars, one-third of which he delivered to the plaintiff. Upon the evidence produced I am of the opinion that the plaintiff is accountable to his copartner for what the firm should have received under the original contract or agreement touching this claim, to wit, twenty-five per cent. of the sum recovered. This amount is charged in this account as a collection by the plaintiff on behalf of the firm.

I am directed by the order of reference to allow the defendant in this account one-half of all the fees and commissions which the plaintiff received or reasonably should have received by reason of the assignment of H. D. Cooke & Co. The deed of assignment from this firm to the plaintiff, which is filed as an exhibit in this reference, provides that from the proceeds coming into the hands of the assignee there should be first paid the expenses of sales and collections and of preparing and executing the trust, including a commission of five per cent. upon the amount of said sales and collections, for his services in the discharge of the said trust. The sum of these sales and collections, as testified to by the plaintiff in this reference, is one hundred and four thousand nine hundred and seventy-seven dollars and seventy-one cents, upon which amount the plaintiff was entitled to retain the sum of five per cent., as provided by the deed of assignment. He testifies that he did not retain any sum for his commissions or fees, but that he holds certain securities as a guarantee for their final payment. I think that for the omission to retain these commissions from the moneys coming into his hands the plaintiff is alone responsible, and that the defendant is entitled to one-half of the sum which should so have been retained. I have therefore charged the plaintiff with these commissions as if they had been retained or collected by him. It appears in the testimony in this cause, on page 67 of the printed record, being the testimony of the plaintiff, that the sum he had expected to charge for services under this assignment, including commissions on the collections and payments, was fifteen thousand dollars, and it is claimed here that, in view of his testimony, he should be charged with that sum as being the fees and commissions which he should reasonably have received. Notwithstanding the evidence of the plaintiff on this point, I do not feel justified in charging him in this account a greater sum than that stipulated by the deed of assignment, in view of the fact that there may be objections to any further or greater allowance to him and such allowance may not finally be made.

I have allowed the defendant credit for an amount claimed to be due to him by the plaintiff on partnership accounts other than those hereinbefore referred to and which appear formulated in a suit at law, No. 30197, which credit is conceded by the plaintiff.

The defendant, at the foot of his account filed, claims interest on

the several items of expenditure and disbursement, but I am unable to find in the case any sufficient reason for allowing interest on either of the items.

JAS. G. PAYNE, *Auditor.*

SCHEDULE A.

Account of the Partners with Each Other.

Henry M. Baker.

DR.

To net amount of partnership fees received by him, as per Schedule B.....	$97,820 14	
Less one-half, as his proper share.....	48,910 07	$48,910 07

CR.

By amount paid to the plaintiff September 6, 1886.....	15,000 00	
" one-half of 25 per cent. of the amount recovered on the claim of Isaac G. Baker, one-half of $1,312.50.....	656 25	
" balance due from the plaintiff on account stated and admitted	2,712 81	
By one-half of the commission which should have been retained by the plaintiff under the deed of assignment from H. D. Cooke & Co., commission 5 per centum on $104,977.71 = 5,248.88 — one-half	2,624 44	$20,993 50
Balance due H. M. Baker to the plaintiff—forward.....		$27,916 50

SCHEDULE A.

Partnership Account—Continued.

Balance due from Henry M. Baker to the plaintiff, Horace S. Cummings		$27,916 57
Interest on $27,350.09 from September 1, 1889, to July 1, 1895.....	$9,572 53	
Interest on $566.48 from October 30, 1890, to July 1, 1895	158 60	
Total interest to July 1, 1895	$9,731 13	

JAS. G. PAYNE, *Auditor.*

SCHEDULE B.

Account of Henry M. Baker of Fees Received in the Inspector Cases Described in This Proceeding.

DR.

To amount of fees received in said cases in 1886, as per Exhibit H. M. B. No. 3		$32,977 51
" fee received in claim of J. O. Mallory		400 00
" same in claim of D. O. De Wolf		443 14
" amount of fees received in said cases during 1888		64,823 34
" ditto in cases during 1889 and prior to September 1		6,353 68
To fees collected in claims on hand at date of dissolution and allowed and collected subsequently, as follows:		
In claim of Silas T. Soule	$300 93	
" " Wm. H. Sentell	265 55	
		566 48
		$105,564 15

SCHEDULE B.

Account of Henry M. Baker—Continued.

CR. $105,564 15

By amounts paid other attorneys, as per Exhibit H. M. B. No. 3	$1,488 81	
" attorneys' fees and costs paid in suits to recover fees	423 58	
" paid for stationery, postage, typewriting, &c	425 00	
" amounts paid for services before committees of Congress, &c	3,075 00	
" paid associate attorneys in 1887, 1888 and 1889	1,731 62	
" traveling expenses	150 00	
" paid for clerical work	275 00	
" paid W. E. Perry, services in New Jersey cases	75 00	
" paid Geo. C. Lewis, services in Vermont cases	100 00	
		7,744 01
		$97,820 14

JAS. G. PAYNE, *Auditor.*

CUMMINGS
vs.
BAKER.

APRIL 8, 1895.

Hearing pursuant to notice.

Present: Mr. Mackey for the plaintiff, and Mr. Bond for the defendant.

Mr. Mackey, for the plaintiff, makes the following objections to the account filed by the defendant in this reference on the 4th of February, 1895. We object as a credit to the amount of $1,075.00 "paid for services before Congress and elsewhere in inspector cases." We also object to a similar item of $2,000.00 "paid for services before Congress and elsewhere in inspector cases." We also object to the item of $16,212.29, being a credit to H. M. Baker "for professional services for obtaining, prosecuting, and collecting inspector cases, being the difference between one-half and one-third of the net fees." We also object to the item of $7,500.00, being a credit claimed for "one-half of the fees and commissions received, or which should reasonably have been received, by H. S. Cummings by reason of the assignment of H. D. Cooke & Co. to him."

In regard to the item of one-half of the fees in cases and business taken by said Cummings during the existence of the partnership, but not settled at the time of its dissolution and concerning which he should account, I am instructed by my client to say that he knows of no fees that have been collected by him and unaccounted for, other than those embraced in the credit of $2,712.81 claimed by Mr. Baker and which credit he admits.

Adjourned to April 10, 1895, at 2 o'clock p. m.

CUMMINS
vs.
BAKER.

APRIL 10, 1895.

Hearing pursuant to adjournment.

Present: Mr. Mackey for the plaintiff, and Mr. Worthington and Mr. Bond for the defendant.

HENRY M. BAKER, having been first duly sworn, testified as follows:

By Mr. BOND:

Q. Mr. Baker, in this account filed by you with the auditor you claim a credit of $1,075.00 under date of 1886, amount paid for services before Congress and elsewhere in connection with these cases. Will you state whether you expended that sum, and if so, how, for what purpose?

A. Of that amount I paid one thousand dollars to Henry C. Johnson, who had been commissioner of customs. He was thoroughly familiar with all these cases, having passed upon very many of them. He was then sent out of office and was acquainted with many members of the Appropriation Committee, and I asked him to explain to the members of the committee then cases which were

then pending for appropriation, which he did, and he charged me one thousand dollars, which I paid him.

Q. Did you take any receipt or voucher for that expenditure?

A. I did not.

Q. Was that after the date of your alleged purchase of the claims or before?

A. It was after. The services were rendered before, but the payment was afterwards.

Q. Why did you not take a receipt or voucher from him?

A. Mr. Johnson did not wish to be known in the matter, as he had so recently been a Government officer and passed upon these cases, and I knew him as a man of integrity, and I simply paid him the money and called it square.

Q. That was after you supposed the cases were your own, and you had no one to account to?

A. I had no doubt of it in my mind.

Q. Was he, in your opinion, of assistance to you—benefit to the prosecution of the claims and in obtaining the appropriation for the payment?

A. I have no doubt of it. The seventy-five dollars I do not remember how I made up at this moment. There were quite a number of small expenditures, and I may have lumped them. I know that the expenditures were hundreds of dollars greater than I have asked credit for here, for the reason that I had no memorandum, or no receipts were taken, but they were hundreds of dollars in excess of the claim here.

Q. Expended in the course of the prosecution and collection of these claims?

A. Entirely so.

Q. There is another item of two thousand dollars paid for services before Congress and elsewhere. Will you explain in regard to that—what that expense was?

A. The appropriation in 1887 failed and the allowances had been large, and it was necessary to be as certain as possible about the securing of an appropriation for the claims in the coming Congress, and I again employed Mr. Johnson. He worked in the matter, and I paid him eighteen hundred dollars.

Q. When was that—after?

A. That was paid in 1888 some time.

Q. What services did you employ him to do or did he render, as far as you know?

A. He saw the members of the Appropriation Committee, especially those of the subcommittee, explained the cases, explained the judgments or petitions in the Court of Claims, and generally gave any information that they might desire. I employed him because I supposed his statement of the cases would be better received than my own as a registered attorney. The two hundred dollars balance was paid to Neil Dumont, who had some powers of attorney from the same clients as mine. He had not filed them, but learned that the cases had been filed by me, and he came to me about them. We had had some cases in dispute which led to suits in relation to

fees, and we compromised this matter by my paying him two hundred dollars, and his powers of attorney were never filed.

Q. That was for the relinquishment of the claims in your favor?

A. They were claims that I had powers of attorney for, but he had later powers of attorney than mine, and to obviate any contention or conflict I paid him the two hundred dollars.

Q. Did you take a receipt?

A. I have no receipt for that.

Q. Can you tell about the time of that payment?

A. In 1887 or 1888. I cannot tell which year; I presume in 1887.

Q. I will ask you whether these are part of the expenses referred to in your answer on page 17 of the Record, where you speak of the expenses amounting to thousands of dollars which you had incurred in that matter?

A. They were part of them.

Q. And in your testimony, when asked what was the amount that was left due Cummings and Baker out of cases in 1886, you say "$31,488.70, but that does not cover any of the other expenses of the firm, which were large in a great many directions," I will ask you whether this was any portion of the expenses incurred?

A. The $1,075.00 was a part.

By Mr. WORTHINGTON:

Q. Referring to the credit which you claim in your account for $16,212.29 for personal services, please state what those services were and what is the ground for the claim.

Mr. MACKEY: I object on the ground that it is not within the scope of this reference.

Objection overruled.

A. In 1886 I represented to my partner, Mr. Cummings, that I was no longer willing to continue the partnership upon the original basis, and that I desired a dissolution of the partnership. He wanted to know upon what ground, and I told him because I had been doing nearly all the work and he had been receiving an equal amount of the proceeds. He said that he knew that I was doing most of the work, and that he was willing to take one-third instead of one-half of the fees in the inspector cases, and that he did not want a dissolution. I said that was worth considering, and we then went on that basis, and the final trade by which he was paid $15,000.00 was made upon the basis of his receiving one-third and my receiving two-thirds of the fees in those cases. In addition, I gave up my right to fees in the Cook assignment case, which were considered to be equal to $7,500.00, making the whole amount which I was to allow him $22,500.00; $15,000.00 was paid in cash and the remainder in the relinquishment, as stated.

Mr. Mackey objects to the answer as not relevant. Objection sustained.

Q. Please state what services you rendered in connection with the collection of these inspector cases after September 6, 1886.

A. After September 6, 1886, I took the entire charge of all of the so-called inspector cases; I secured, prepared, argued, and settled all of them, thus taking a large share of my time for three years. I worked on an average of about ten hours a day, and of that time fully eight hours a day were devoted to these cases. The other time related to the cases still in the partnership, in which Mr. Cummings had an equal share of the fees with myself, which fees have been duly accounted for and paid.

Q. How long after the 6th of September did you continue to devote this amount of time to these inspector cases?

A. Up to the dissolution of the partnership, September 1, 1889.

Q. That is, for three years?

A. Three years; yes, sir.

Q. During that period what services, if any, did Mr. Cummings render in connection with the inspector cases?

A. He rendered services in the settlement by getting the drafts cashed and making remittances to the clients in, I think, thirteen cases during my absence in 1886. He subsequently was occasionally asked, or offered when I was very busy, to put some papers in typewriting which I had prepared, and he interviewed Assistant Secretary Maynard in connection with the delivery of some of the drafts in 1888.

Q. That is a matter already covered by the testimony?

A. Yes; his services were merely nominal and could have been compensated with a few dollars, if compensation had been proper or required. I may say in relation to the other cases which we had not covered by the assignment of 1886 that I brought more fees into the firm than Mr. Cummings, so that there was, on an even basis, no loss to him on account of the extra hours which I served on the inspector cases.

Q. As bearing upon the question of the value of your services in reference to the inspector cases during those three years, will you state how your knowledge and familiarity with those cases and the procedure and the laws relating to them and to the persons interested in them compared with that of other attorneys or claim agents in Washington?

A. I presume the other attorneys had no knowledge on the subject or they would have obtained the cases equally with myself. Some few attorneys obtained a few cases, but they relied on me wholly for the conduct and argument of every point involved, and in order that there should be no conflict in the prosecution and argument of them I either made arrangements with them to make such arguments or I bought their cases and thus obtained full control.

Q. How long a time prior to September 6, 1886, had you been acquiring knowledge of the laws and procedure in reference to these claims which enabled you to render efficient service in them?

A. I have given great attention to matters relating to the customs service of the United States for about twenty years.

Q. And how long had you devoted yourself to these claims particularly—how long had you been qualifying yourself to represent claims in that class prior to September, 1886?

A. The law under which these claims arose was enacted in 1874. I first became aware of the legality of the claims, in my judgment, in the fall of that year. I commenced active prosecution or procurement of them in June, 1875, and have devoted a portion of my time to them from that date until the date of the sale.

Q. As to the amount with which you charge yourself on account of fees in the inspector cases in your account filed here before the auditor (what proportion was allowed before the 6th of September, 1886), what part was allowed before September 6, 1886?

A. The item of $32,977.51, and also two cases, Mallory and De Wolf, entered separately, aggregating $843.14.

Q. Now, as to those cases, what services did you render after September 6, 1886?

A. The settlement of them.

Q. What do you mean by that?

A. The money had been appropriated by Congress and the final payments had been made, drafts issued, and I settled with the clients.

Q. As to the remainder of the fees with which you charge yourself, amounting to about seventy thousand dollars, I wish to ask you, from your acquaintance with the cases, having rendered the services in them that you state, and your knowledge of the compensation paid for that class of service at that time in this city, what, in your opinion, would be a fair compensation in the cases which produced fees amounting to about seventy thousand dollars, with which you charge yourself, and confining yourself to services rendered after September 6, 1886?

Mr. MACKEY: I object.

Objection overruled.

A. I think my services in relation to these claims, from September 6, 1886, to 1889, were fully worth the fee charged—25 per cent.—and that, as claim attorneys are generally compensated, it was a reasonable fee and charge, and that I earned the same.

Q. What was the approximate amount of the sums collected in the cases for which you have claimed this seventy thousand dollars in fees?

A. The fees ranged, if I remember correctly, from ten to twenty-five per cent.; largely twenty-five per cent. At that basis there would be something like $250,000 in the aggregate. I do not remember the sum. I may say still further, in answer to this question, that if I had not been engaged upon these claims there were other claims in which I could have been quite as profitably employed, and that if the agreement of 1886 had not been made the firm would have been dissolved, and I would have been free to act as I pleased and as I did in relation to those cases.

Adjourned to April 15, 1895, at 1 o'clock p. m.

APRIL 15, 1895.

The hearing in this cause is postponed to April 17th, at 2 o'clock p. m.

APRIL 17, 1895.

On account of the absence of Mr. Worthington, the case is adjourned subject to notice.

CUMMINS
vs.
BAKER.

APRIL 24, 1895.

Hearing pursuant to notice.

Present: Mr. Mackey and Mr. Worthington and Mr. Bond.

Counsel for the defendant file an amendment to the account heretofore filed as to the item of $16,212.29, substituting therefor the following: "Amount due the defendant for personal services in obtaining, prosecuting, and collecting inspector cases subsequent to September 6, 1886, $42,700.00."

Mr. MACKEY: We object to the amendment of the record in this way, because that item, we submit, is beyond the scope of the reference in this cause.

The amendment to the account is filed and marked H. M. B. No. 1.

Examination of Mr. BAKER resumed.

By Mr. WORTHINGTON:

Q. Mr. Baker, at the close of the last session I had inquired of you as to what would be a fair compensation for the services rendered by you in the cases in which the fees aggregate seventy thousand dollars, as appears by your account, and you had answered that about twenty-five per cent. would be a fair fee. I did not ask you that question with reference to what would be a fair compensation between the claimants and their attorney, but what I wanted to get at was what, in your opinion, would be a fair compensation to be paid by the attorney or attorneys who held such claims with the right to prosecute them and retain a twenty-five per cent. fee to an attorney to whom they should turn them over and give him the labor and responsibility of their prosecution and collection. I mean by this if the attorney so employed were himself to have only a contingent compensation.

Mr. MACKEY: We object to the question on the same ground as heretofore, namely, that the question calls for testimony beyond the scope of the reference.

Objection overruled.

Q. This seventy thousand dollars was made up of cases of different standing. There were included in that allowances secured from cases which at the time of the bargain and sale were suspended. Those aggregate in subsequent allowances something over

thirty-eight thousand dollars, aggregating nine thousand dollars of fees.

Q. Explain what you mean by suspended cases.

A. These suspended cases have been filed in the department, taken upon such evidence as had been submitted, and not deemed by the accounting officers sufficiently proven for allowance. At my request they were not disallowed, but were held suspended with permission to file further evidence and for a rehearing.

Q. Do you mean they were suspended on the 6th of September, 1886?

A. They were suspended on the 6th of September, 1886, and are the cases referred to in the printed record, which I offered to the complainant for a fee of five per cent. after the sale. I think in those cases it was worth the twenty per cent. which would have been left after the payment of the five per cent. to manage and collect them.

Q. Have you a list of those suspended cases?

A. I have (witness files list of suspended cases, marked H. M. B. No. 2), which shows the amount of the cases and the amount of fees derived from these cases.

Q. And forms part of the seventy thousand dollars referred to?

A. Yes, sir. At the time of the bargain and sale, September 6, 1886, there was a small list of some twenty names known as cases outstanding. They were cases which were believed to be good, but they had not placed their claims with any attorney for collection. Some of those I subsequently secured, and also a considerable number of cases which at that time I did not know to be in existence. I have a list of those cases, aggregating fifty-eight in number, with a total allowance of $64,967.17, from which I collected fees aggregating $15,134.81, which list I file as an exhibit (marked H. M. B. No. 3). These I regard certainly as not worth more than five per cent. at the time of the sale, and that the other twenty per cent. should be properly assigned to me as compensation for securing, controlling, and conducting them to collection. This leaves about forty-three thousand dollars as the fee resulting from the cases then on file not suspended.

Q. By then you mean September 6, 1886?

A. September 6th, 1886. I think no one would have regarded those cases as worth more than ten per cent. of the fee, but in the amended claim which I have put in I have allowed twelve and a half per cent. on one-half of the fee, though in quite a number of the cases the fee was less either by original contract or by an allowance to other attorneys. I speak of twenty-five per cent. as the general rule, not the specific.

Q. Explain what you mean by saying you have allowed twelve and a half per cent.

A. That is, I have claimed twelve and a half per cent. of the fees secured as a proper allowance for my personal services in these last cases.

Q. After what date?

A. After September 6, 1886; that would leave an equal amount

for the value of the cases at the time of the sale. I regard this as more than liberal, for the reason that in cases that I purchased from other attorneys I gave them, as a rule, only five per cent. of the allowance, and the remaining twenty per cent. passed for the value of services to be rendered.

Q. Do you refer to cases in which other attorneys had procured powers of attorney to prosecute and collect cases on a fee of twenty-five per cent.?

A. And then they assigned them to me with an allowance of what is estimated as one-fifth of the fee or five per cent. of the claim.

Q. In order that the auditor may properly weigh these transactions which you have been referring to in the way of the purchase of claims from other attorneys, will you give us an idea, as nearly as you can, how many such transactions there were, with what attorneys, and for what period they covered?

Mr. MACKEY: I note an objection to all this line of examination, questions and answers.

Objection overruled.

A. I bought cases from Mr. Theodore E. Davis, an attorney in this city, and from Neil Dumont—probably there were some others that I do not remember—and I had local attorneys from whom I received cases in Detroit and Fort Huron, they securing powers of attorney in my name and receiving as compensation a contingent fee of five per cent. or one-fifth of the fee allowed me.

Q. Do you recollect the number or amount of the claims which you purchased from Mr. Davis?

A. I do not.

Q. Or from Mr. Dumont?

A. Not either of them. They were paid for and no record was made of them; I simply remember the fact of getting them; there were not a great number; probably a dozen of them.

Q. Were these transactions before or after September 6th, 1886?

A. Both.

Q. And the rate was the same before as afterwards?

A. Exactly.

Q. Now, in reference to the first class of cases you spoke of, the suspended cases, will you give the auditor a general idea of the labor that was required in regard to those cases which had been submitted and suspended and held up for further proof?

A. In general they were suspended because there was not proof that the parties had been on duty each day of the year, or that they having appointments as deputy collectors only had performed the duties of inspectors of customs, or both. It became necessary to file proofs upon both of these points. If these proofs could be secured the cases were allowed; otherwise they were disallowed; and upon the list of suspended cases some were allowed and some finally disallowed.

Q. Where did those claimants live, some particular place or portion of the country, or were they over the country at large?

A. They lived all the way from Massachusetts to Michigan.

Q. About how many of these suspended cases—I mean cases which were suspended on the 6th of September, 1886—were disallowed, notwithstanding your efforts?

A. I cannot answer that question definitely, but I presume one-fifth of them.

Q. What compensation have you received for your services in those cases which failed?

A. Nothing whatever.

Mr. MACKEY: In addition to the objection already noted, which I understand applies to this entire line of examination, I also object to this question and answer because calling for and giving testimony which is a matter of record, and this is not the best evidence in the case.

Objection overruled.

Q. Now, as to the second class of cases—those in which you procured powers of attorney after September 6, 1886—let the auditor know what special labor and difficulty, if any, attended the getting of those cases into your hands.

A. Such of the cases filed as are included in the list? In those cases the claimants had been communicated with several times by letter, and in some instances I had personally visited the claimants. In other instances I visited them subsequent to September 6th, 1886. It was a matter of long correspondence, and frequently the employment of local attorneys and efforts of various character to secure these various cases. Then after securing them they were filed and prosecuted in the same manner as the other cases.

Q. Were there any claimants from whom you sought to get powers of attorney and failed?

A. There were quite a number of them who employed other attorneys, and some who had, through letters and other sources of information, secured such knowledge that they prosecuted their cases individually.

Q. What compensation have you received for your labor in regard to those cases where you failed to get the powers of attorney at all?

A. Nothing whatever for the labor and expense.

Q. Have you any memorandum or statement showing how the amount of $42,700.00 is arrived at, which you claim in the amended item submitted today?

A. I have no formal memorandum or statement, but the whole amount of fees received in cases allowed after the sale of September 6, 1886, as shown by the account, is $71,177.02. About $47,000.00 of this amount was received in cases on file at the time of the said sale and not acted upon by the department. I have claimed for services in relation to those cases one-half of that amount, being $23,500.00. In the cases classed as "suspended cases" I subsequently secured fees aggregating $9,087.08, and I have claimed as proper compensation for managing those cases four-fifths of these fees, or $7,200.00, In the cases classed as "secured by me after September 6, 1886," I procured fees aggregating $15,134.81, and I have

claimed four-fifths of those fees, or $12,000.00, which several amounts make up the amount stated in the amended claim.

Mr. MACKEY: We object to so much of this answer as undertakes to make proof of facts that are provable by matters of record, or at least matters which are in writing in the departments and can be proven by better evidence. The records of these cases are on file, and they should be proven as they would be required in any other cases and as we were required to prove our case in the case instituted, and I move to strike this testimony out.

Objection overruled.

Q. With reference to the largest of these three classes of cases, that of cases which were pending on the 6th of September, 1886, and which had not been suspended, I want to ask you whether there were any cases of that kind which were not collected and which failed?

A. There were some of them. In all of the cases there were about seventy that were wholly disallowed. I cannot state just the proportion of those that were of these several classes.

Q. In what way did the services that you rendered in these seventy disallowed cases compare with the amount of services required in the other cases?

A. Generally they were contested cases and contested as long as there was any possibility of securing an allowance on them, which necessitated the average amount of work, at least.

Q. And, as to any one of these seventy disallowed cases, have you received any compensation for your services?

A. Nothing whatever for services or expenses.

Q. In the prosecution of these cases generally after September 6th, 1886, were you required to leave Washington?

A. In some cases I was. In some I went for testimony, in some I went to secure the cases, and in some I employed local attorneys to take the testimony and affidavits, etc.

Q. Give us an idea of where you went then, subsequent to September 6th, 1886.

A. I went to Burlington, Vermont, one trip; to Westerly, Rhode Island, on another trip; twice to New York city, and to Philadelphia, and some other places that I do not remember now.

Mr. MACKEY: I object on the ground that Mr. Baker has put in certain charges for clerk hire in certain places and we have allowed the same.

Q. Did any litigation grow out of these claims which required services in prosecuting and defending cases after September 6, 1886?

A. Do you mean as to the cases or as to the fees?

Q. Either.

A. There were no cases in court to secure the allowance on. All the settlements subsequent to September 6th, 1886, and for a time prior to that date were made in the departments, and those allowances reported to Congress for an appropriation. If the appropria-

tion was made they were paid. There were several suits instituted by me to recover fees—one suit in Michigan, one in Chicago, one in New York, and one in Connecticut, certainly—and various efforts were made less than suits to recover fees in other cases.

Q. Do I understand these were efforts to get from you that which you had retained as fees?

A. No; they were efforts made by me to secure fees from the clients when the draft had been sent to the client or when the Treasury draft had been put into the hands of another attorney.

Q. Now, in reference to this matter of getting an appropriation, what difficulty was there about this after the claims had been allowed—speaking, of course, of the same period, after September 6th, 1886?

A. After September 6th, 1886, I continued to secure allowances of the cases in the department which were reported to Congress, quite a large sum being so reported to the Congress in session in 1887——

Q. Do you mean the Congress that met in December, 1886?

A. Yes; Dec., 1886. I appeared before the committee, presented the cases, had the friendly assistance of some Congressmen, and employed Mr. Johnson, as before stated, to help me, but no appropriation was recommended by the House committee. The amount reported was put on by the Senate committee and passed the Senate, but went out in conference and no appropriation was made in 1887.

Q. Give us an idea of the amount of time you spent about this matter of getting the appropriation during this session of Congress and in which you failed.

A. I was at the Capitol, before the committees, on several occasions—both the House and Senate; visited members of the committee from time to time at their rooms to explain the cases, and generally I suppose I was employed for perhaps two weeks on the matter, frequently working in the evenings. I remember that year having evening sessions with the Committee on Appropriations of the House by their appointment.

Q. Now, as to subsequent years about getting appropriations?

A. In 1888 the amount to be appropriated for had been increased by the amount of the allowances for that year.

Q. Doubled up, so to speak?

A. Yes; and as the appropriation failed there was an earlier appropriation made; that was attended to as in the preceding year, only with more earnestness; and then again a still later appropriation, both of which had to be looked after. In 1889 the amount allowed was considerably smaller and did not require very extensive effort. I looked after it, but not to the same degree as in the years 1887 or 1888.

Q. Were there any cases in which the fees were recovered after 1886 where you had any difficulty in getting the fees after an appropriation was made, other than those as to which you have already testified there was litigation?

A. There were quite a number of cases which were settled without litigation. In some instances I made a slight reduction of fee

for the purpose of immediate settlement; in other cases there was considerable correspondence about the matter, they not wanting to give the power of attorney, and correspondence resulted in my sending the drafts C. O. D.; sometimes the draft was split up in the Treasury, and one sent to the claimant and the other given to me by claimant's request; sometimes, after correspondence, draft was sent to me for my fee, and I ordered the Government draft sent to the claimant, and so on; I don't remember the details, only that these things occurred.

Q. During these years, after September 6th, 1886, when you were rendering these services you have been telling us about, where was your office?

A. 1411 F street northwest.

Q. Where was Mr. Cummings' office?

A. Up to about the 1st of September, 1889, we occupied the same office.

Q. Same room?

A. Same room—same building.

Q. Did you ever have any clerk or other assistant about this business?

A. Part of the time I did.

Q. What part?

A. Well, I could not tell you definitely. I had copying done from time to time. Miss Lathim worked for me on several occasions, sometimes two weeks or more.

Q. What proportion of these services after September 6, 1886, were rendered prior to September, 1889?

A. Fully nine-tenths.

Q. During that period what notice or warning had you that Mr. Cummings claimed any share of the proceeds of this work which you were doing?

A. No intimation whatever until about six or eight weeks prior to his leaving the office, when I demanded a final dissolution of all business relations.

Q. That has already been testified to in this case?

A. Yes.

Adjourned to April 27, 1895, at 10.30 a. m.

CUMMINGS
vs.
BAKER.

MAY 14, 1895.

Hearing pursuant to notice.

Present: Mr. Claughton and Mr. Mackey for Mr. Cummings, and Mr. Worthington and Mr. Bond for Mr. Baker.

Examination of Mr. BAKER resumed.

By Mr. WORTHINGTON:

Q. In what you have testified as to a reasonable compensation for your services in the inspector cases after the 6th of September,

1886, did you or did you not take into consideration *of* the fact that the fees in these cases were contingent upon recovery?

A. I did; it is stated in percentages.

Q. Now, laying aside that feature of the case altogether and assuming that you were to be paid for your services, what would be fair compensation, without reference to whether the claimants were paid or not—what, in your judgment, would have been a fair compensation per annum for what you did?

Mr. MACKEY: I make the same objection to this question as to the former question of the same nature.

A. At that time I could easily have made ten thousand a year with the work which I put into these inspector cases after September 6, 1886. I think that would have been a reasonable compensation; certainly seventy-five hundred dollars would have been very moderate.

Q. You mean a year?

A. Each year.

Q. Now, to get at the same thing, but in a different way, what, in your judgment, were the inspector cases which the firm had on hand on the 6th of September, 1886, and which had not been allowed, worth to the firm if they had been sold outright at that time and the firm stepped clear out of the business?

Mr. MACKEY: I object to that question as speculative and not within the scope of this reference.

Objection sustained.

Cross-examination.

By Mr. MACKEY:

Q. Did you, as a matter of fact, do any more work in these inspector cases after the 6th of September, 1886, than you would have done if the paper of that date had not been signed by Mr. Cummings?

Mr. WORTHINGTON: I object.

Objection overruled.

A. It is almost impossible to answer the question directly, for the reason that if the sale had not been made the firm would have been dissolved and each would have managed whatever business he had or could procure.

Q. You have testified, as a matter of fact, that you did all or nearly all of the work in these inspector cases, did you not?

A. I have.

Q. Before the assignment?

A. Before the assignment and I did it afterwards.

Q. And did no more afterwards than you did before?

A. I have not said so.

Q. I ask you as a matter of fact.

A. I think I did more, because there was a greater number of cases on hand.

Q. If you did nearly all the work before September 6th, 1886, in these cases, what more could you have done after the assignment after that date?

A. I think that is evident if there were more cases.

Q. There were more cases, but in each of the cases did you do any more work?

A. Some cases required more work than others, and there would be no way that could be ascertained except by taking up each specific case and comparing them.

Q. Did you do any more work upon that class of cases after that date, the 6th of September, 1886, than you had been doing upon the same class of cases before that date?

A. I could not say positively whether I had worked fifteen minutes per day more or less on one side or the other.

Q. Did you do any more work in proportion to the work which Mr. Cummings did?

A. I think I did. Mr. Cummings very seldom did any work in the last three or four years.

Q. Did he do any more work before the assignment than he did afterwards?

A. I think he did. His work diminished from the time we entered into the partnership until the end of it.

Q. But you concede that you did nearly all the work in these cases and continued to do all after the assignment?

A. Substantially.

Redirect.

By Mr. WORTHINGTON:

Q. After the sale or the assignment of September 6th, 1886, in what proportion, as nearly as you can state, was what remained of the firm's business transacted by you and by Mr. Cummings? I mean outside of the inspector cases.

A. I think I did at least twice the work, outside the inspector cases, which Mr. Cummings did for the firm.

Mr. MACKEY: We object to the question as not within the scope of the inquiry.

Q. In regard to the productiveness of your labor and his after September 6th, 1886, and while the firm lived, leaving out the inspector cases, what have you to say to that?

Mr. MACKEY: I object.

Objection sustained.

Adjourned to May 18th, at 2 o'clock p. m.

CUMMINGS
vs.
BAKER.

MAY 16, 1895.

Hearing pursuant to adjournment.
Present: Mr. BOND and Mr. MACKEY.

ALLAN RUTHERFORD called by Mr. Bond.

ALLAN RUTHERFORD, having been first duly sworn, testifies as follows:

By Mr. BOND:

Q. Please state your residence and occupation and also your place of business.

A. Attorney-at-law; place of business, Atlantic building; residence, Gaithersburg, Md.

Q. State if you have held a position in the Treasury Department; if so, what and during that time.

A. I was Third Auditor of the United States Treasury for a little over seven years.

Q. During what time?

A. From 1870 to 1877, I think.

Q. Have you been in your present occupation ever since that time?

A. I have.

Q. Have you had occasion to give much, and, if so what, attention to the collection of claims against the Government?

A. Yes; I have had a large number of cases of that character in the Court of Claims and before the Government departments.

Q. Do you know of the class of claims usually designated as "inspector cases"?

A. Well, I only know of them from having seen them in the published reports of the Court of Claims. I have never had any of that class myself.

Q. What cases do you refer to in the Court of Claims, if any?

A. Well, the test case that was brought to determine the rights of inspectors of customs. I think the case was the case of Adams against The United States.

Q. Do you know where that is reported?

A. I think it is in the 20th volume of the Court of Claims reports.

Q. Do you know who prosecuted that claim?

A. The attorney of record was Henry M. Baker.

Q. Supposing, say, in the fall of 1886 an attorney or attorneys had obtained and filed in the Treasury Department, with powers of attorney to him or them, a large number of cases belonging to the class of inspector cases mentioned, upon which no action had been taken, and for which no appropriation had been made and no evidence filed, and the fees in which were to be, say, twenty-five per cent. of the amount finally collected, and were to be collected from the claimants after the allowance of the claims, the fee being wholly

contingent thereon, what, in your opinion, would be a fair price for another attorney to pay for the purchase of those claims?

Mr. MACKEY: I object.

Objection sustained.

Q. Supposing claims of the character and class mentioned in the last question had been so filed in the Treasury Department, no evidence had been taken or filed, and no appropriation had been made, and these claims were placed in the hands of an attorney thoroughly familiar with them and the principles involved and the decisions theretofore made, and that attorney obtained the necessary evidence thereafter and worked during about three years upon them, and ultimately collected about one hundred and eighty thousand dollars upon them, and obtained forty-seven thousand dollars in fees from the claimants for their collection, his compensation to be wholly contingent upon the collection of the claims and fees, what, in your opinion, would be a fair compensation to him for his services in collecting those claims and fees, the number of different claims making up the one hundred and eighty thousand dollars being from one hundred and fifty to one hundred and seventy-five and the services being rendered between September 6, 1886, and September, 1889?

Mr. MACKEY: I object to the question, because it has not been shown that the witness is an expert in regard to these cases. He is asked if he has had any experience in these cases, and he says he knows nothing about them except from having seen them in the published reports of the Court of Claims.

Second. It is a hypothetical question based upon a state of facts that do not exist in this case; and

Thirdly. Because it is asking the witness' judgment upon the value of a contingent fee.

Objection overruled.

A. If the attorney has to pay all the expenses connected with perfecting these cases, obtaining all the evidence, and takes his chances after the allowance of collecting his fee from the claimant, in view of the regulation a short time before adopted by the Treasury, by sending the drafts direct to the claimants instead of to the attorneys who secured them, I should say that the attorney who took the cases and prosecuted them under those circumstances would be entitled to four-fifths of the fee. I would not take them myself for less, and I have had cases in which I have had that much.

Q. If no powers of attorney in cases of the class above named had been obtained and no claims filed, what, in your opinion, would be a fair compensation to a competent attorney who should obtain powers of attorney and claims from a list of claimants furnished him and should file and prosecute them, collecting upon them about sixty-five thousand dollars and receiving a fee or fees amounting to fifteen thousand dollars, such compensation to be paid to him by another person who was equally interested with him as a partner in that business, claims numbering about seventy?

Mr. MACKEY: I object for the reason that the question is not based upon the theory of any extra work done by Mr. Baker after the assignment.

Objection sustained.

Q. Supposing that claims of the above-mentioned class and character, amounting in all to two hundred and fifty to two hundred and seventy-five thousand dollars, were held by two attorneys and one of them should undertake to do, after they were filed, all the labor necessary to their collection, working about eight hours a day for three years—from September 6, 1886, to September, 1889—in their prosecution and collection and the collection of the fees and obtaining of appropriations, and should collect that amount and about twenty-five per cent. as fees for their prosecution and collection, he being conversant with the business and competent for its prosecution, what, in your opinion, would be a fair compensation to be paid to him per annum by his copartner or co-owner for such labor and service?

Mr. MACKEY: I object on the same ground.

Objection overruled.

A. I can only answer that by saying that I would not undertake the cases under such circumstances for less than six thousand dollars per annum, if I had to give my time and attention to it.

Q. You would consider that fair compensation to an attorney thoroughly competent to do the work and who worked at it faithfully?

A. I should.

Cross-examination.

By Mr. MACKEY:

Q. Supposing instead of the class of claims of the character of cases mentioned by Mr. Bond the cases were but a continuation of a series of claims arising under the statutes, which these attorneys have been prosecuting for years previous—as, for instance, a case where the Government had been paying an inspector of customs so much a year and it turned out that under the law he was entitled to so much more a year, or, rather, that the Government had been paying him so much per day and it turned out that he was entitled to be paid so much more per day, that record of the service was in the department, and that all it required was a written letter to the department by the attorney, requesting that the client be allowed the difference between that which had been paid him by the Government and that which he was entitled to under the law, and that amount, as I have already stated, had been fixed by the courts, and the only question was how many days he had served, and that appeared of record in the department, and no evidence was necessary, and nothing more was necessary to be done in the case other than I have said, the filing of a letter asking for the additional compensation, and the computation was done by the department, and the department admitting its liability, no controversy of fact or law

existing between the department and the attorney, and that these cases having been once allowed by the department, and subsequent applications were simply for the additional amount accruing by reason of the continued service of the inspector—if the cases were of that character, would not your estimate of the value of the attorney's services per year be quite different from that which you have stated, to wit, six thousand dollars a year?

Mr. BOND: I object to the question on the ground that it is contrary to the facts in the case as proven by the testimony already taken.

A. I have never heard of such a case and my experience has been varied. Every obstruction is placed in the way of the claimant, every quibble that can be raised is raised. I never in all the experience that I have had have known of an instance in which the claimant or his attorney could simply file a letter and ask for a settlement and obtain it; on the contrary, I have been on the plainest cases for months and years, where there was nothing but a simple question of computation.

Q. Your answer to Mr. Bond that the services of an attorney were worth six thousand dollars a year was based on such a state of facts as you have just detailed, that the Government threw every obstacle in the way of the attorney, and so on?

A. Yes; that has been my experience.

Mr. BUTTERFIELD called by Mr. Bond.

JOHN W. BUTTERFIELD, having been first duly sworn, testifies as follows:

By Mr. BOND:

Q. Mr. Butterfield, please state your residence and occupation.

A. I live at 419 4th street N. W., this city; am a lawyer by profession.

Q. State whether or not you have held any office or position in the Treasury Department of the United States; and, if so, what, and during what period.

A. I was in the Second Comptroller's office for a period from about 1861 to 1876, to about May or June of 1876. I was what they call now a chief of division; it was law clerk then.

Q. Did that office have charge of claims presented against the Government?

A. Yes, sir.

Q. State whether or not you have had any experience, and, if so, what, since that time in the prosecution and collection of claims of different classes against the United States.

A. I have been engaged in the prosecution of claims against the United States since 1876; cases in the Court of Commissioners of Alabama Claims, both courts; Court of Claims in general jurisdiction and spoliation claims, and some few in other jurisdictions of that court, and also against the United States in the executive departments, particularly the Treasury.

Q. State whether you have had any knowledge of or acquaintance with the class of claims commonly known as "inspector cases."

A. I only know of those cases, with one exception, from a discussion of the question with Mr. Cummings, and particularly with Mr. Baker. I prosecuted one single claim of that sort.

Q. Then you have some acquaintance with the method of presenting and prosecuting claims of that character?

A. Yes.

Q. Supposing an attorney or attorneys had secured and filed in the Treasury Department, with powers of attorney to them, claims of that character amounting to some one hundred and eighty thousand dollars, and on which they were to receive a contingent fee on the claims when collected of twenty-five per cent., and were to collect that fee as their compensation, no evidence having been filed in support of the claims and no action having been taken by the department on them, and no appropriations having been made to pay them, they being thus held in September, 1886, what, in your opinion, would be a fair and reasonable compensation to be paid by those attorneys having the claims to one of themselves, or to a third party or attorney being conversant with those cases and thoroughly competent to prosecute them, who should succeed in collecting the above amount and fees to the amount of forty-seven thousand dollars for his services during those three years for so doing, basing it upon a percentage which was to be a contingent compensation for the service?

Mr. MACKEY: I object.

Objection overruled.

A. I should say, and that has been my rule, irrespective of the character of the claims—some are difficult and some are simple—that where the two attorneys had each a moiety of the fee and one of them retired for any cause, that the party who prosecuted them would take one-half of his fee—that is to say, if it was twenty-five per cent., each having twelve and a half per cent., and one attorney took the cases and prosecuted them he should have one-half of twelve and a half, or six and a quarter, making his fee eighteen and three-quarters per cent.—in other words, three-fourths of the whole fee.

Q. Supposing that claims of the above-mentioned class and character, amounting in all to two hundred and fifty to two hundred and seventy-five thousand dollars, were held by two attorneys, and one of them should undertake to do, after they were filed, all the labor necessary to their collection, working about eight hours a day for three years—from September 6, 1886, to September, 1889, in their prosecution and collection and the collection of the fees and obtaining of appropriations, and should collect that amount and about twenty-five per cent. as fees for their prosecution and collection, he being conversant with the business and competent for its prosecution, what, in your opinion, would be a fair compensation to be paid him per annum by his copartner or co-owner for such labor and service?

A. In regard to that, I should put it on a different ground; not as percentage, but simply as services, and that would depend a great deal upon the value of the claims, the amount of fees, and there being no percentage allowed at all, but simply for services. In such a case as that—losing sight of a percentage I should have myself—I would say I would not prosecute them for five thousand or six thousand a year, because I should expect to give my whole attention to them, and it dropped at the end of three years. I might lose a great deal in the meantime; it might be in the nature of insurance. I should in such cases as that—not knowing how long—how many years—it would take, but beginning and working until it closed, although you might forecast somewhat the period of time—I should want seven or eight thousand dollars a year. I have had instances where I was offered a salary for prosecuting claims and declined it on those grounds. I was in 1882, or had been a long time——

Mr. MACKEY: I object.

Objection sustained.

Q. I would like you to give, as near as you can, in answer to the question, just what you would consider a fair compensation for the services of an attorney such as are mentioned in that question?

A. I would not undertake the service of that sort unless I had about seventy-five hundred dollars a year.

Q. Is that what you would regard as a fair and reasonable compensation for such services?

A. Assured of that salary, I should think it was fair compensation; but I want to confine it to myself; that I would not undertake it myself for less.

Q. I am asking you what you would consider a fair and reasonable compensation for the services named.

A. I should think that what I consider fair in my own case I would consider fair generally, because there are very few persons that can undertake these cases and prosecute them. A man's salary may be fully earned every year by the knowledge and skill he has acquired.

Cross-examination.

By Mr. MACKEY:

Q. Your answer to Mr. Bond's first question was without regard to the amount of work that the attorney did in the cases after the other attorney had retired, was it not?

A. I should consider I had to go over the whole case as a new field, and that is not a little thing. There may have been supplied a good deal of evidence, and the little that remains to be prosecuted might be the most difficult and on which the whole matter turns. That is my experience in the matter.

Q. It would depend altogether on the amount of work he did after the attorney had retired—after his associates had retired—from the case, would it not?

A. I should not undertake the service on any such condition.

Q. It is not what you would undertake, but you have stated that where two attorneys were prosecuting a case and one retired, that when the case was finally decided and the amount collected that the prosecuting attorney should have three-fourths of the fee and the retiring attorney one-fourth. I ask you if that estimate of yours is not regardless of the amount of work which remained to be done in the case after the attorney retired?

A. It would be wholly independent of the consideration whether there was more or little to be done in the one hundred and seventy cases.

Q. Your answer, then, would not depend altogether upon that?

A. My answer would not depend upon the question you put; it would simply depend upon the number of cases, the fee that was to be received; and whether there was more or less evidence to be supplied, greater or less labor to be performed, would not touch that question. I should presume there was a good deal of work to be done in matter of that sort and you would not be governed by that; you would simply take them as they were and prosecute them to your best judgment and take the fee; otherwise there would be no end in the settlement.

Q. And that is what you mean when you answer Mr. Bond's question—when you answer Mr. Bond's hypothetical question, your answer is summed up in the answer you have just given, is it not?

A. It is.

Mr. Bond announces his evidence closed in chief.

Mr. BOND: We call upon the complainant to render an account of the fees received by him since the dissolution of the firm, any business that belonged to the firm at the dissolution of the partnership, that we may be given credit therefor.

Adjourned to May 21, 1895.

CUMMINGS *vs.* BAKER.

MAY 21, 1895.

Hearing pursuant to adjournment.

Present: Mr. Mackey, Mr. Claughton, and Mr. Bond.

HORACE S. CUMMINGS, having been first duly sworn, testifies as follows:

By Mr. MACKEY:

Q. The defendant has called on you to render an account of the fees received by you since the dissolution of the firm in any business that belonged to the firm of Cummings & Baker at the dissolution of the partnership; will you state now what fees you have received since the dissolution of the firm in business belonging to the firm?

A. I have received no fees on account of any business in which

Cummings & Baker had any connection, either directly or indirectly, since the dissolution of the firm. There are two items which I will name, one of which, under the decree of the court, I must account for, namely, the fees arising from the Cook estate; the other case was that of Isaac G. Baker, which was a case which was in my hands during the partnership, but in which I held no agreement or power of attorney, other than a mere letter from the clients. That case I carried in the departments as far as it could be carried and it was defeated. They asked me if the case should go to the Court of Claims and I said, Yes. I thought it was a good case for the Court of Claims, but as I did not wish to go into the Court of Claims, on their advice I turned the claim over to Mr. Mackey as an attorney, they making a contract with Mr. Mackey and giving him powers of attorney. Mr. Mackey took the case as filed in the Court of Claims and prosecuted it to a successful conclusion, receiving the fee from them, and at its conclusion he gave me his check for one-third of his fees, which was about seven hundred dollars. Whether that case can rightly be called one of the cases pending and in which the firm of Cummings & Baker are entitled to an equal division of fees is a matter for others to decide.

Q. The petition in that case in the Court of Claims was filed, as you remember, in whose name?

A. I wrote the petition myself and filed it as attorney-in-fact and put the name- of Cummings & Baker as counsel.

Q. Was that before the dissolution or afterwards?

A. That was before the dissolution.

Q. Did you do anything under that petition after filing it?

A. Nothing.

Q. And then you turned the case over to Mr. Mackey?

A. I did.

Q. And Mr. Mackey made a contract, as I understand you to say, with the claimants?

A. He did.

Q. There were some cases set out in the bill of particulars in the lawsuit; have you any reference to those?

A. None whatever. Mr. Baker and I agreed in regard to those cases in regard to the fees due to him and the fees due to me, and in the final agreement, in regard to those fees, there was an amount due to him of some twenty-seven hundred dollars, and that he claims credit for in his account and which I admit.

Q. Now, in regard to the Cooke assignment, what have you to say in regard to that?

A. In October, 1884, Mr. Cook, or Cook & Co., became insolvent; they were owing me individually and as a firm a large amount of money. They asked me to take the assigneeship, which I at first refused, but at the request of some friends of Mr. Cooke I consented. I did this with a view of making good some of the losses that I had sustained, in hopes that I might recoup myself in that way.

Q. What was that debt?

A. Money that was due me by the bank and money that was due me by Mr. Cook individually.

Q. And the amount?

A. The amount was somewhere about fifteen thousand dollars. The assignment was made to me on the 23rd of October, 1884, which, after the usual provisions of such instruments, provided, first——

Mr. BOND: I object to the witness stating what the assignment provided.

Counsel for Mr. Cummings offer the original assignment in evidence. (Filed and marked Exhibit H. S. C. No. 1.)

Q. What is the provision of the assignment to which you wished to refer?

A. (Reading from the assignment:) The first provision, which is: "The expenses of said sales and collections and the necessary expenses of preparing and executing this trust, including a commission of five per centum upon the amount of said sales and collections for his services in the discharge of this trust." I collected, amounts from sales and from debts due the firm, the sum of $104,977.71. I will say that when I took this deed of assignment of the Cooke estate I did not expect or think that it was to form any part of the partnership business, because it was——

Mr. BOND: I object to what the witness expects, and because this is not in response to any question. I object to the tenor of the testimony now being given.

Objection sustained.

Q. State what fees you received.

A. I have not received any fees.

Q. What reason have you for not having received any fees?

A. The reason that I was misled by the representations of certain persons interested to see me through with the assignment that what I did would be made all right, meaning by that that my services would be paid for, and on that ground I devoted all the collections and sales to the liquidation of the debts due by Cook & Co. I should have collected these fees as the amounts were received, but I did not, relying upon the representations of other people, and for that reason I did not receive any.

Q. You have not been paid your debt?

A. I will say that I have been paid my debt from the bank the same as the other creditors, but not the debt as to the services rendered in winding up the estate.

Q. What were the representations made to you, Mr. Cummings, and by whom?

Mr. BOND: I object to the question as to the representations made to him.

Objection sustained.

Q. Will you state whether you rendered a greater or less amount of work in these inspector cases after the 6th of September, 1886, than you did before. It has been claimed by Mr. Baker that you did not do as much work in the cases after that date as you did before. Will you state what your understanding of the matter is.

A. I did fully as much work subsequent to September 6, 1886, in the inspector cases as I did at any time during several years before. In fact, I did more, for the reason that Mr. Baker was absent from the office more than he had been previous. In 1887, I think, Mr. Baker was absent from the office several months, taking a long trip from the East to the Pacific coast and to Alaska and down the California coast as far as San Diego, and returned home by that route, and during that time I had to answer the usual letters of inquiry from the many clients wishing to know the situation of their claims, and to give them such information I was obliged to go — the Treasury Department in order to get that information, which, had Mr. Baker been there, he could probably have given them at once. I know that in the matter of the inspector cases I did all the work that I was asked to do, was called on to do, although at the time I was under the impression——

Mr. MACKEY: You need not state your impressions about it.

Witness continues: And for a further answer to the question I refer to the depositions already on file given by me.

Cross-examination.

By Mr. BOND:

Q. Did you not include the claim of Isaac G. Baker in your schedule of cases belonging to the firm and under your charge in the schedule filed by you in this cause, marked H. M. B. No. 5?

A. I did. I included the claim of Isaac G. Baker in there through mistake, and I have stated the circumstances here just as they occurred, to the best of my ability and recollection.

Q. Do you know what fee was collected in that case?

A. I do not.

Q. Did you not state just now that you got one-third of the fee?

A. I received one-third of the fee, which, I think, was about seven hundred dollars.

Q. One-third?

A. Yes; it might be either more or less.

Q. Did you consult Mr. Baker in regard to turning that case over to other attorneys?

A. I did not.

Q. Why did you not consult him in the matter?

A. Simply because I had no contract with Isaac G. Baker myself.

Q. Mr. Baker had no contracts in a great many cases that he had?

A. I never knew him not to have; he generally had an iron-clad contract, and if he did not have a contract it was contrary to his custom.

Q. I mean in September, 1886, he had no contracts, had he, in a good many cases that he collected?

A. He may not have had a contract in some of the cases that he subsequently collected, but he had a contract for them at one time or another, but I never had any contract in the Baker case.

Q. In regard to these other cases included in this schedule, Ex

hibit H. M. B. No. 5, are there any other cases still pending—any of these cases still pending?

A. All of these cases are in the same condition now as they were when I filed this instrument, as far as my knowledge goes, and I will say that my relations to the claims are the same now as they were then; no rights have been disposed of by me.

Q. Has Mr. Baker ever declined to render any service that you have called upon him to render in any of these cases under your charge undisposed of?

A. Never.

Q. In speaking of the amount you collected under the assignment of Cook & Co. to you, do you mean that was the amount you collected in money?

A. That is the amount of sales and collections in money.

Q. In money?

A. Yes, sir.

Q. Did you collect or receive anything else for the firm than money under this assignment?

A. I did not.

Q. Did not take any securities?

A. No, sir.

Q. Or assets or bonds or stocks of any kind?

A. I did not.

Q. Did you use any such assets in payment of the debts of the firm?

A. I did, and it was done in this way——

Q. To what extent or amount?

A. I could not say, simply because a large amount of these assets were held by creditors of the firm as collateral—a large amount of them—and I made what I considered an extremely good trade by surrendering to the creditors the collateral, they relinquishing their claim.

Q. And that was in effect the same as if you had made a sale of those assets and out of the proceeds of such sale paid the creditors?

A. ——.

Mr. MACKEY: I object; that is a question of law.

Objection sustained.

Q. Then, as I understand you, when the creditors of the firm held assets of the firm, consisting of bonds or stocks and choses in action and property of that kind, you made a settlement with them by disposing of those assets to them in payment of the indebtedness, did you?

A. I did.

Q. And is the amount of those assets included in the amount of the sales and collections that you have given?

A. The greater part are included in that. For instance, when the firm failed and a person would be a debtor to the firm of H. D. Cooke & Co. in a certain sum, and to secure that debt he pledges certain collaterals, all of these collaterals and the notes were rehypothecated by Cook & Co., mostly with the Metropolitan bank.

After the failure the debtor would come and offer his money to take up his note and to pay off the debt, principal and interest. I, of course, was obliged to deliver it to him on the payment of the note, principal and interest, so I would take up the amount to the Metropolitan bank and pay the Metropolitan bank, and deliver the collateral and note back to the debtor of the firm, and in that way there is a large amount of that included in the sum collected by me.

Q. How much is so included?

A. Well, I could not say, but they were all collections.

Q. Now, where assets of the nature above mentioned belonging to H. D. Cook & Co. were held by their creditors as collateral, did you settle with those creditors in certain instances by their taking these collaterals at an agreed price?

A. I did.

Q. Is the amount of the collaterals thus taken by the creditors in settlement included in the amount that you have given, $104,977.71?

A. Almost all.

Q. How much money did you collect in the course of your administration as assignee?

A. The amount stated there.

Q. Did you collect that money?

A. I collected that money.

Q. How do you make it out that you included the collaterals which the creditors took in the payment of the indebtedness to them?

A. By entering it up on the account.

Q. Can you make up a statement of the amount that was and that was not included in the assets mentioned?

A. I could not.

Q. Have you made a final settlement of your account as assignee?

A. I have not.,

Q. Have you rendered an account or made a statement to the creditors since the date of the one filed in this cause, the printed one?

A. I do not know which one that is.

Q. Since the one printed in this record on page 112.

A. I do not know whether I have or not. I know I have sent out letters to different people who inquired about the condition of the estate, but as the creditors are now reduced to none I am not troubled with that question.

Q. There are no remaining creditors of H. D. Cook & Co.?

A. There are no creditors of the estate except those who—all have received their fifty cents on the dollar. There are no creditors of the estate except some personal friends of Mr. Cook, who will not relinquish the balance, but say they will never make any trouble, provided no more money is collected, though I think possibly there may be some additional sums collected in the future.

Q. Have you included in the amount given by you of sales and collection the amount secured or collected from or through Mr. Cook personally?

A. What do you mean?
Q. The interest in the Washington and Ohio Railroad Company.
A. Certainly, they are all included in the sum mentioned by me.
Q. That is included?
A. Yes.
Q. What amount is included for that interest in the Washington and Ohio R. R. Company?
A. Somewhere in the vicinity of, I should say, from thirty-three to thirty-five thousand dollars. They consisted of bonds of the Washington, Ohio and Western railway that I sold on a- average with no coupons, all defaulted bonds, for about 72 cents on the dollar, and today the interest is paid, and the bonds are guaranteed, and the last sales in New York are 73 cents on the dollar.
Q. You sold that?
A. I sold them. The First National Bank of New York were the ultimate purchasers of it.
Q. Did you include in that amount the amount received in any way from the assets of Cook & Co. in Florida?
A. I did, portion of them, but portions of those amounts have not been realized on yet.
Q. Do you hold any interest of Cook & Co. in property in Florida?
A. I do.
Q. To what amount?
A. I could not state what the amount is, only whatever there is there is for Cook & Co., as I believed it was better in that form than on securities which are worth nothing on the market today.
Q. Do you hold any of these Florida assets in your own name?
A. There are some in my name which I hold for the estate.
Q. What amount do you hold in your own name for the estate?
A. Well, there is—I could not tell you either the nominal or real amount, but I think there is in the vicinity of about 3,300 acres of ground in St. Johns county.
Q. Anything else?
A. One hundred and twenty shares of the canal stock.
Q. That is called what?
A. The East Coast Line Canal Company?
Q. What is the nominal value of those shares?
A. One hundred dollars.
Q. Are they in your name?
A. They stand in my name as assignee.
Q. How does the title stand?
A. Stands in the name of H. S. Cummings.
Q. Why didn't you take that in your name as assignee?
A. I could have done it just as well as not. I am responsible for it as assignee.
Q. Didn't you take it and don't you hold it as a part of your fees or as a guarantee of your fees?
A. I took it with the hopes of making my fees, but not as my fees.

Q. You hold it, then, for the purpose of assisting you in making your fees?

A. Exactly so.

Q. Are there any other assets of that firm in Florida except what you have named?

A. None others that I know of.

Q. Do you hold any other property in your own name that belongs to the estate of Cook & Co.?

A. Not that I know of.

Q. When you made the report on page 112 of the printed record in this cause you stated that at that time you had reduced the indebtedness of the firm of Cook & Co. to the amount of $101,052.34 and of the unsecured indebtedness $53,467.34, and that the estate is worth more today than at the date of the failure. Have you not sold any of the assets or collected anything for the estate since that time?

A. Yes.

Q. Can you tell to what amount?

A. I cannot now. I would like to say, in explanation of that, that the settlement of H. D. Cook & Co.'s indebtedness was accomplished in a great degree by friends of Mr. Cooke; for instance, his partner in Utah, Mr. Kendall, sent him twelve thousand dollars to take up certain claims. One other gentleman came forward and advanced eight thousand dollars and took Mr. Cook's personal obligation. Mr. J. Cooke, of Philadelphia, contributed quite an amount of money. Mr. Cook himself made a good deal of money and turned it in to pay many of these debts. He only paid one last week, in order to make up the fifty per cent.

Q. Did you include that in the amount of collections stated by you?

A. I did not, because I would be entitled to no fee for that, and it was money that was voluntarily advanced by his friends and relatives.

Q. What do you say the amount was?

A. I could not state now, but I would say the amount was from eighteen to twenty thousand dollars that was advanced by Mr. Cook's partner and his relatives and friends.

Q. When do you expect to close your business as assignee of Cook & Co.?

A. When I get all the creditors satisfied.

Q. You say that when Mr. Baker was absent in 1887 you assisted him in replying to claimants. Did you do that voluntarily?

A. I answered the letters of inquiry and what other work I did on the same principle that I had always done what work I could; that Mr. Baker would naturally do when he was not absent.

Q. To whom were those letters addressed?

A. To different clients of Mr. Baker.

Q. The letters that you answered, to whom did they come addressed?

A. To Cummings & Baker, as a rule.

Redirect.

By Mr. MACKEY:

Q. Have you been paid all your debt by the firm of H. D. Cook & Company and by Mr. Cook individually, owing you at the time of the assignment?

A. I hold Mr. Cook's obligations and note now to the extent of some seven thousand dollars.

Q. Have you any other security for that obligation than the assets of the assignment?

A. The assets of the assignment are not in any way applicable to Mr. Cook's personal obligations.

Q. Then this obligation that you hold of Mr. Cook is his personal obligation?

A. His personal obligation.

Q. For the debt he owed you at the time of the assignment?

A. At the time of the assignment.

By Mr. BOND:

Q. When did you take his note and obligations?

A. It is a remnant of a debt that Mr. Cook owed me in about 1888, of eighteen thousand dollars of loaned cash, and which had been reduced from time to time until it now amounts to between six and seven thousand dollars.

Q. Do you mean that you hold the original obligation given you before the assignment, or do you hold his notes and obligations taken since the assignment?

A. The notes that I hold are the renewals of the same debt.

Q. Those that you now hold were given you since the assignment?

A. The present ones I hold?

Q. Yes.

A. They were given since the assignment.

Q. How recently?

A. I think the last was given me about four years ago, and the old ones torn up, new ones given.

Q. And these notes and obligations you just speak of are in addition to the lands that you named and the other assets?.

A. This has nothing to do with the Cook & Co. assignment. It is the personal obligation of Mr. H. D. Cook.

By Mr. MACKEY:

Q. Has the bank debt been paid?

A. I have been paid my debt due by the firm of H. D. Cook & Co. as a firm the same as the other creditors.

Q. And the other creditors were paid fifty per cent. and released?

A. I was paid in full because I was made one of the preferred creditors, of which there is a list in the deed of assignment.

CUMMINGS
vs.
BAKER.

MAY 29, 1895.

Hearing pursuant to adjournment.

Present: Mr. Claughton and Mr. Mackey for the plaintiff, and Mr. Bond and Mr. Worthington for the defendant.

JOHN G. LONG called by Mr. Bond.

JOHN G. LONG, having been first duly sworn, testifies as follows:

By Mr. BOND:

Q. Please state your residence and occupation.

A. I am a resident of Florida and a lawyer by profession.

Q. Where have you resided in Florida, and for how long?

A. I reside at St. Augustine, St. John's county; have been a resident of that county about thirty-two or thirty-three years, I think.

Q. Do you own lands in that county?

A. I do.

Q. Have you bought and sold land there?

A. I have from time to time.

Q. Are you familiar with the values of land in that county?

A. Well, I used to be. I have been absent from there a good deal for the last eight or ten years, and I am not as familiar now as formerly, but I am somewhat familiar now with the land in a general way.

Q. Have you any knowledge of the lands located in that county by Mr. H. S. Cummings or his agent paid for by bonds of the Florida Coast Line Canal Transportation Company? And, if so, please state their general location and what you know of the location, of locating them.

A. I can only say in a general way that I know of Mr. Cummings purchasing lots in St. John's county some years ago—possibly eight or ten years ago. I am not sure, however, as to the exact time, and I do not know that I could give the exact location or specific description of these properties. I am not sure that I can even recognize from the numbers and descriptions as by legal subdivisions any of these properties at present.

Q. How were they purchased and located?

A. I do not know that.

Q. I mean with what were they located and paid for.

A. I can perhaps answer that in this way better: Mr. Cummings and Mr. Baker were in business together at that time, both of them; I think each of them about the same time asked me my opinion as to the advisability of converting bonds of this canal company into land and my opinion as to the same; lists, I think, were submitted to me, possibly, and I may have pointed out lands that were, in my opinion, more desirable, because some of these lands I knew, as I had seen them; others I did not know; I selected or suggested the purchase of what I knew of the lands in the locality, but as to how the transactions was closed, whether from my personal

knowledge they were paid for in bonds or cash, I could not state, not from my personal knowledge. I was under the impression, however——

Mr. MACKEY: Never mind; don't state your impressions.

By Mr. BOND:

Q. State whether or not Mr. Cummings said anything to you about this land.

A. I think it was by correspondence; whatever relations we had were brought about by correspondence. I do not know that during this time I had any personal interview with Mr. Cummings, in relation to it; I am not sure as to that.

Q. Will you state what valuation was placed upon these lands as locatable or purchaseable with the bonds of that company?

Mr. MACKEY: I object.

A. I know that I remember—it is not fresh in my mind—the board of directors fixed a schedule of values of the lands belonging to the corporation from five to fifteen dollars; that is my recollection; I would not be positive as to the limit either way, but I think, as I remember it now—I think they were scheduled from five to fifteen dollars.

The AUDITOR: Five to fifteen dollars an acre?

A. Yes; an acre.

By Mr. BOND:

Q. State whether or not that was the value payable in cash or bonds.

A. As I remember, it was in value payable in cash or bonds.

Cross-examination.

By Mr. CLAUGHTON:

Q. Were the bonds worth par?

A. I do not know as to the value of the bonds; I have no means of knowing that.

Q. How do you know the directors had made out that schedule?

A. Well, I was familiar with the officers; I knew the officers of the corporation very well; was familiar with their business there; I knew that in a general way, perhaps from the fact that I purchased some of the lands myself.

Q. You say you knew it in a general way; did you know it because the officers told you?

A. Yes; Dr. Westley told me; he was president of the corporation.

Mr. CLAUGHTON: I object to this as not competent proof.

By Mr. BOND:

Q. Where did you take up lands—in that county? Did you take them up in St. John's county?

A. Yes. I purchased a very little, and I am unable at this time to tell you what I paid for them.

Q. Did you take them up with bonds of this company?

A. No; I paid cash.

Q. Can you approximate, from your recollection, what you paid for them in cash?

A. No; I cannot. I can only say, as I remember, from five to fifteen dollars.

Mr. MACKEY: I object.

Q. Were the lands of this canal and transportation company that you took paid for in bonds or not?

A. I think, as I remember it, I did not buy direct, either, from the company. I bought through Samuel J. Maddox or from some friends of his who had purchased the lands of the canal company, and I took them at the price they paid. Possibly they were paid for in bonds. I am not sure, but I want to correct my testimony in that respect. I don't think I bought any land direct from the company.

Q. The lands were originally bought from the company?

A. Bought from the company.

Mr. CLAUGHTON: I ask that this testimony be stricken out as irrelevant and immaterial.

Mr. BAKER recalled by Mr. Bond.

By Mr. BOND:

Q. You have heard the testimony of Mr. Cummings at the last session in regard to the assistance rendered by him to you in matters pertaining to the inspector cases during your absence from the city in 1887. I will ask you to state what his assistance consisted of and how long were you absent.

A. I heard Mr. Cummings' testimony on that subject. I went away in June—the latter part of June—and returned in the early part of September. During that time no pending case was allowed, rejected, or advanced. No action whatever was taken upon the cases. Upon my return Mr. Cummings handed me a package of not exceeding twenty letters, which he said he had replied to. They were simply letters of inquiry, and the general character of the replies as he stated to me were that the cases were pending and would be taken up in the usual order; or, if more specific information was asked, he informed them that Mr. Baker would reply on his return. That was the only service Mr. Cummings rendered.

Q. State whether or not you rendered Mr. Cummings any service or assistance in the matter of the Cook assignment?

A. He frequently consulted me in matters pending that assignment, and when people came in when he was absent from the city or absent from the office I gave them general information on the subject and generally satisfied them, and I assisted him somewhat in the preparation of the papers which he used in the matter.

Q. Do you know Mr. John C. Bullitt, of Philadelphia, referred to

by Mr. Cummings in his testimony in this cause on page 67 of the printed record?

A. I have met him several times.

Q. Will you state, if you know, his profession and any specialty he may have in the line of his profession and his standing?

A. He is a lawyer by profession and makes a specialty of corporation business, settlement of assignments of corporations, and receiver's work generally, and I understand and believe he is a recognized authority on those points throughout the U. S.

Evidence closed.

Adjourned subject to notice.

EXHIBIT H. M. B. No. 1.

Before the auditor.

In the Supreme Court of the District of Columbia.

CUMMINGS v. BAKER. } Eq. No. 12263.

Statement of Account by Henry M. Baker (under Decree).

He charges himself with fees in inspector cases as follows:

1886.	As per Exhibit H. M. B. No. 3, Printed Record, Court of Appeals, p. 176, &c.....	32,977 51
"	In case of J. L. Mallory, Record, p. 179....	400 00
"	" D. O. De Wolf, " "	443 14
1888.	In cases paid during this year	64,823 24
1889.	" " " & prior to dissolution of firm, Sept. 1, '89, Record, p. 2.....	6,353 68
		2) 104,997 67
	One-half of above =.....	52,498 83

He admits that after the final dissolution of the firm he collected fees as follows:

Case of Silas T. Soule.....	$300 93
" Wm. H. Sentell.....	265 55
	$566 48

The power of attorney in Soule's case is dated Feb. 25, 1889. The claim was allowed Oct. 10, 1889, and paid in Oct., 1890.

The power of attorney in Sentell's case is dated July 30, 1889. The claim was allowed Oct. 11, 1889, and paid in Oct., 1890.

The work in these two cases was principally done after the dissolution of the firm, and it is claimed that they should not be included among the cases for which Mr. Baker is accountable; but

should the auditor decide otherwise, then he claims an allowance as compensation for services in their collection, rendered after the dissolution, of ⅛ of the amount.

NOTE.—No fees were collected in cases of Jesse Babcock, 1886, and Samuel E. Barr, 1888.

He claims credit as follows:

1886.	By amount paid other attorneys, as per Exhibit H. M. B. No. 3, Record, p. 180, "No. 7".....	1,488 81
"	By amount paid Goodelle & Nottingham, attorneys, in suits for fees in cases of De Wolf and Babcock.....	150 00
"	By amount paid for stationery, postage, and typewriting in inspector cases (estimated).....	150 00
"	By amount paid for services before Congress and elsewhere in connection with these cases.....	1,075 00
"	By amount paid Sarah A. Lathim for clerical work in same.....	200 00
"	By amount paid expenses in taking testimony in suits for fees in cases of De Wolf and Mallory (estimated).....	40 00
1887 & 1888.	By amount paid associate attorneys as their share of fees in cases collected during these years.....	1,061 68
" "	amount paid for clerical services.....	75 00
" " " "	stationery, postage, and typewriting (estimated).....	225 00
" "	amount of expenses (estimated) on business trips relative to inspector cases, viz:	
	At Burlington, Vt..... $45	
	" Westerly, R. I..... 30	
	" New Haven, Conn..... 25	
	" New York (twice)..... 40	
	" Philadelphia..... 10	
		150 00
	By amount brought forward.....	
1887–'8.	By amount paid Wm. E. Perry for services in New Jersey, inspector cases.....	75 00
" " "	paid expenses in taking testimony in suits for fees in cases of Peale and Baird (estimated).....	40 00
" " "	paid attorney in suit for fees in case against Wm. Baird...	193 58

1887–'8.	By amount paid Geo. C. Lewis in certain Vermont cases.....	100 00
" " "	paid for services before Congress & elsewhere in inspector cases.....	2,000 00
1889.	By amount paid associate attorneys as their share of fees.....	669 94
" " "	paid for stationery, postage, and typewriting (estimated).....	50 00
1886–'7, 1888–'9.	By amount due H. M. Baker for personal services in obtaining, prosecuting, and collecting inspector cases, being the difference between ½ and ⅓ of the net fees, see complainant's testimony, Record, p. 56, &c.....	16,212 29
" "	one-half of the fees and commissions received or which should reasonably have been received by H. S. Cummings by reason of the assignment of H. D. Cook & Co. to him, Record, p. 67.....	7,500 00
	By amount brought forward.....	
	" amount due from said Cummimgs as per account stated and sued for in suit of Baker *vs.* Cummings, at law, No. 30197 Record, pp. 5, 6, 102, &c.....	2,712 81
	" interest on the same.....	
	" amount paid Cummings Sept. 6, 1886, in purchase of his interest in inspector cases, Record, pp. 4, 95, &c.....	15,000 00
	" one-half of fees in cases and business taken by said Cummings during the existence of the partnership, but not settled at the time of its dissolution, and concerning which he should account.....	

Interest on said several items claimed as credits.

DISTRICT OF COLUMBIA, *ss:*

Henry M. Baker came personally before me, and, being duly sworn, deposes and says that the foregoing account as to receipts and disbursements is just and true according to the best of his knowledge and belief; that he is able to state the receipts accurately and has so stated them by reason of his having kept an account of the same in connection with the settlements made by him with his clients, the claimants; but he is unable to state the disbursements for expenses with the same accuracy for the reason that, believing all the proceeds of the inspector cases to be his individual

property after the settlement in 1886, he paid many of them from cash in hand, for which he took no vouchers and of which he kept no record. He is sure, however, that the amount disbursed by him in obtaining, prosecuting, and collecting said inspector cases exceeds by a considerable sum, which he is now unable to specify, the amount stated in said account.

As to the items of credit claimed other than for disbursements for expenses, he believes them to be just.

HENRY M. BAKER.

Subscribed and sworn to before me this 2d day of February, 1895.

WM. M. SMITH,
Notary Public. [SEAL.]

It is hereby stipulated and agreed that the foregoing transcript of the account of Henry M. Baker, filed with the auditor and accidentally omitted from the transcript of the record heretofore filed in the Court of Appeals and printed, may be now filed as a part of the transcript in this case and inserted at page 38 of said printed record.

S. R. BOND,
Solicitor for Defendant (Appellant).
FRANKLIN H. MACKEY,
Solicitor for Pl'tiff, Appellee.

(Endorsed:) No. 565. Henry M. Baker, appellant, *vs.* Horace S. Cummings. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Apr. 9, 1896. Robert Willett, clerk.

MAY 29, 1895.

Hearing pursuant to notice.

Present: Mr. Claughton and Mr. Mackey for the plaintiff, and Mr. Worthington and Mr. Bond for the defendant.

Mr. Bond proceeded to argue the matters involved in the reference on behalf of the defendant and the account submitted by him.

Mr. Mackey and Mr. Claughton submitted their oral arguments in support of the objections to the said account, and Mr. Worthington proceeded with the closing argument in behalf of the defendant, pending which the hearing was adjourned to the 30th of May, at 10 o'clock a. m.

MAY 30, 1895.

Hearing pursuant to adjournment.

Present: Mr. Claughton and Mr. Mackey for the plaintiff, and Mr. Worthington and Mr. Bond for the defendant.

Mr. Worthington closes his argument and the matters of the reference are submitted.

Amendment to Defendant's Account Submitted to the Auditor.

EXHIBIT H. M. B. No. 1.

In the Supreme Court of the District of Columbia.

CUMMINGS v. BAKER. } Equity. No. 12263. Before the Auditor.

The defendant amends his account heretofore filed as to the item of $16,212.29, for *which credit* is therein claimed by substituting therefor the following, viz:

By amount due the defendant for personal services in obtaining, prosecuting, and collecting inspector cases subsequent to September 6, 1886..... $42,700

EXHIBIT H. M. B. No. 2.

List of Inspector Cases Suspended at Date of Sale, September 6, 1886, *Yet Subsequently Allowed and Paid.*

Names.	Amount allowed.	Fee collected.
John X. Miller.....	$1,567 50	$391 87
S. W. Hall.....	1,443 74	360 93
Joseph Taber.....	2,608 58	652 14
George F. Sisson.....	3,329 02	832 25
J. H. Holmes.....	2,126 70	265 84
Thomas Hurst.....	2,127 00	531 75
Catherine Sweeney.....	2,099 00	524 75
Benjamin Predmore.....	1,015 32	253 83
David S. Beetle.....	3,698 53	924 63
Charles S. Peale.....	2,392 50	350 00
Henry W. Gadding.....	4,735 98	1,183 99
H. A. Ashmore.....	122 00	30 50
Wm. J. Alden, Jr.....	4,148 52	1,037 13
Joseph S. Drew.....	4,458 89	1,114 72
Stephen Holmes.....	1,289 13	322 28
Levi B. Downs.....	497 90	124 47
Thomas F. Usher.....	744 00	186 00
Totals.....	$38,404 31	$9,087 08

EXHIBIT H. M. B. No. 3.

List of Inspector Cases Secured by Mr. H. M. Baker, the Defendant, After Date of Sale, September 6, 1886.

Names.	Am't allowed.	Fee collected.
Sarah A. Singer	$1,035 00	$258 75
Edward A. Thomas	148 32	37 08
Eliza L. Foxwell	1,448 07	362 02
W. H. H. Soule	1,203 72	300 93
George Matthews	190 00	47 50
S. P. Millington	63 00	15 75
Remos Wells	156 15	39 04
H. H. Parmester	143 58	35 89
Edwin R. Bell	1,666 32	333 26
W. S. P. Garvin	1,989 28	497 32
Wm. C. Cathcart	594 25	148 56
Silas P. Carpenter	365 80	54 87
Harrison Southworth	2,875 94	718 98
John H. Butler	907 71	226 93
Charles Johnson	2,263 65	565 91
Edward L. Wright	1,151 11	287 78
B. W. Thompson	93 00	23 25
John C. Gram	360 00	90 00
Edward Wilkinson	248 37	62 09
Samuel S. Fifield	749 65	187 41
Adrian C. Dodge	91 50	22 87
Henry Shortle	945 75	236 44
Gould D. Jennings	5,663 68	1,415 92
J. H. Brooks	649 07	162 27
J. H. Johnston	1,662 09	415 52
Silas G. Bean	526 84	105 37
George C. Merrill	201 00	40 20
	27,392 85	6,691 91
Amount brought forward	27,392 85	6,691 91
Wm. H. Woodbury	310 50	77 62
T. W. Dickinson	993 00	124 12
Lyman H. Smith	877 50	131 62
F. A. Hooke	661 50	165 37
Z. Sharper	699 66	174 91
S. H. Newton	63 07	15 77
G. P. Kingsbury	1,462 87	365 72
Joseph F. Field	404 29	101 07
S. H. Laskey	2,484 00	372 60
Wm. E. Stewart	1,532 15	383 04

Exhibit H. M. B. No. 3—Continued.

Names.	Am't allowed.	Fee collected.
Benj. C. Moore	159 00	23 85
Lewis M. Barrett	3,193 70	798 42
F. B. Pillsbury	1,699 77	400 00
J. G. Reynolds	120 97	30 24
H. B. Pettingill	411 00	102 75
Thomes E. Morris	2,699 33	674 83
Henry Call	687 00	171 75
David C. Welsh	1,459 05	364 76
Samuel Butler	3,063 37	765 84
A. B. Riford	1,436 03	359 00
Benedict Yost	292 50	73 12
Charles T. Wickes	1,461 65	365 41
Henry Hooker	585 04	146 26
B. C. Dearborn	207 00	51 75
Henry M. Newcombe	2,996 68	299 66
Phillip H. Paine	1,682 93	420 73
W. W. Oliver	769 58	192 39
Thomas J. Ramsdell	2,406 87	601 72
	62,212 86	14,446 23
Amount brought forward	62,212 86	14,446 23
Wm. H. Sentell	1,062 21	265 55
James W. Edloe	106 63	26 66
Annie M. Hopkins	1,585 47	396 37
No. of cases, 58.		
Totals	64,967 17	15,134 81

Assignment.

EXHIBIT H. S. C. No. 1.

This indenture made this twenty-third day of October, A. D. 1884, between the firm of *H. D. Cooke & Co.* (composed of Henry D. Cooke and Allen G. Campbell) of the first part, and *Horace S. Cummings* of the second part, both of the city of Washington, in the District of Columbia.

Whereas the firm of H. D. Cooke & Co. are indebted to various persons dealing with said firm in various amounts, and whereas said firm are unable to pay and discharge the said indebtedness with punctuality and are desirous of securing the same and making distribution of the assets of said firm.

Now therefore this indenture witnesseth, That the said party of the

first part for and in consideration of the premises and further the sum of five ($5) dollars paid by the said party of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and set over and by these presents *do* grant, bargain, sell, alien, enfeoff, release, convey and set over unto the said Horace S. Cummings, his heirs, executors, administrators, and assigns, *all* the assets of said firm of whatsoever kind or nature, and all the estate real or personal belonging to the said firm or in which they have any interest, of whatsoever kind and wheresoever situated, and all claims held by said firm against any person or persons and all debts due to said firm.

To have and to hold said assets and estate and claims and debts, unto and to the use of the said party of the second part his heirs, executors, administrators and assigns in and upon the following trusts. That is in trust to take immediate possession of all and several the said above-mentioned assets, and as soon as convenient thereafter sell said real and personal estate upon such terms and in such manner as to the said party of the second part shall seem best for the interest of all parties concerned and upon payment of the purchase-money convey and assign such real and personal estate to the purchaser or purchasers; and to collect the proceeds of such sale or sales: Also to collect all claims held by said firm, and all debts due to said firm—and in the collection of such debts and claims the said party of the second part is authorized to bring and prosecute such actions or suits at law or in equity as to him may seem necessary and proper. *And* from the proceeds of such sales and collections, the said party of the second part shall pay—*first*—the expenses of said sales and collections, and the necessary expenses of preparing and executing this trust, including a commission of five per centum upon the amount of said sales and collections for his services in the discharge of this trust. *Second*—the sum of fourteen thousand (*$14,000*) dollars to *Charles Payson*, the sum of fourteen hundred ($1,400) dollars to *J. H. Voorhees*, the sum of ten thousand (*$10,000*) dollars to the *Chesapeake and Potomac Telephone Company* and the sum of twenty-five hundred (*$2,500*) dollars to *Horace S. Cummings* and the sum of six thousand (*$6,000*) dollars to *Henry D. Cooke*, trustee or such sums as may be due to the said above-named parties by said firm, as will appear from their acounts on the books of said firm, in full if sufficient money comes into his hands from said assets, and if not then to pay the said-named parties *pro rata* upon the above amounts so far as said assets when collected will go.

Third. To pay all the other creditors of said firm in full if sufficient money comes into his hands from said assets, and if not then to pay the said creditors *pro rata* as far as said assets when collected will go—*Fourth* the remainder if any to pay to the members of the said firm, their executors, administrators or assigns, according to the respective interests of said members in said firm.

In testimony whereof the said party of the first part, have hereunto set their hands and seals on the day and year first above written.

H. D. COOKE & CO. [SEAL.]
HENRY D. COOKE. [SEAL.]

Signed, sealed, and delivered in the presence of—the words on the margin of page 3 interlined at line 17 of said page where indicated by # before signing—

L. S. FREY.

DISTRICT OF COLUMBIA, *To wit:*

I, L. S. Frey, a notary public in and for said District, do hereby certify that the firm of *H. D. Cooke & Co.*, party to a certain deed bearing date on the 23rd day of October, A. D. 1884, personally appeared before me, in my said District, by *Henry D. Cooke*, one of the members of said firm, and the said Henry D. Cooke, being personally well known to me to be one of the said firm of H. D. Cooke & Co., who executed said deed, acknowledged the same to be the act and deed of said firm of H. D. Cooke & Co. and also the act and deed of him, the said Henry D. Cooke, as one of the members of said firm.

Given under my hand and notarial seal this twenty-fourth day of October, A. D. 1884.

L. S. FREY, [SEAL.]
Notary Public.

[SEAL.]

Defendant's Exceptions to Auditor's Report.

Filed July 11, 1895.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } No. 12263, Eq. Doc. 30.

The defendant excepts to the report of the auditor filed in this case on the 18th day of June, 1895—

First. Because the auditor has disallowed the defendant's claim for amount due him for professional services in obtaining, prosecuting, and collecting "inspector cases" subsequent to September 6, 1886, whereas he should have allowed the full amount of said claim—$42,700.

Second. Because the auditor, as to the defendant's claim against the complainant of one-half the fees and commissions received or which reasonably should have been received by the complainant by reason of the assignment of H. D. Cooke & Co. to him, has allowed only the sum of $2,624.44, whereas he should have charged the complainant with $15,000 on that account and should have allowed the defendant a credit of one-half that sum—$7,500.

Third. Because the auditor has charged the defendant with the sum of $300.95 on account of the claim of Silas T. Soule, whereas he should have charged the defendant with nothing on that account.

Fourth. Because the auditor has charged the defendant with the sum of $265.55 on account of the claim of William H. Sentell, whereas he should have charged the defendant with nothing on that account.

Fifth. Because the auditor has disallowed the defendant's claim for compensation for his services rendered in collecting the claims of said Soule and Sentell, whereas he should have allowed the defendant a reasonable compensation for such services.

Sixth. Because the auditor has charged the defendant with interest on $27,350.09 from September 1st, 1889, to July 1st, 1895, amounting to $9,572.53, whereas he should not have charged the defendant with said sum or any part thereof or with any interest on account of said sum of $27,350.09.

Seventh. Because the auditor has charged the defendant with interest on $566.48 from October 30th, 1890, to July 1st, 1895, amounting to $158.60, whereas he should not have charged the defendant with said sum or any part thereof and should not have charged the defendant with any interest on said sum of $566.48.

A. S. WORTHINGTON,
S. R. BOND,
Solicitors for Defendant.

Exception of Complainant to the Auditor's Report.

Filed July 15, 1895.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Complainant,
vs.
HENRY M. BAKER, Defendant.
} No. 12263, Equity Docket 30.

Exceptions by the complainant, Horace S. Cummings, to the report of the auditor filed herein June 18, 1895.

The complainant excepts to so much of said report as allows to the defendant, Henry M. Baker, the sum of $2,624.44, being one-half of commissions alleged to have been received or which it is alleged should have been received by said Cummings under the deed of assignment from H. D. Cook & Company, as set forth in said report of the auditor, because the complainant says that nothing should be allowed the said defendant, Baker, on account of said assignment from H. D. Cook & Company.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
Solicitors for Complainant.

Decree Overruling Exceptions to Auditor's Report, &c.

Filed February 17, 1896.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS *vs.* HENRY M. BAKER. } In Equity. No. 12263, Docket 30.

This cause coming on to be heard upon the exceptions of the plaintiff and defendant respectively to the report of the auditor filed herein on the 18th day of June, 1895, and counsel for the respective parties having been heard, and the said exceptions having been duly considered by the court, it is, this 17 day of February, A. D. 1896, adjudged, ordered, and decreed that the said exceptions of the plaintiff and defendant be, and the same are hereby, overruled, and the said report of the auditor be, and the same is hereby, in all things confirmed; and the plaintiff in open court now consenting to the defendant being allowed, in addition to the allowance made by the auditor to the defendant in the matter of the Henry D. Cook assignment, the further sum of four thousand eight hundred and seventy-five dollars and fifty-six cents ($4,875.56), it is therefore by the court further adjudged, ordered, and decreed that the plaintiff recover of the defendant the sum of thirty-two thousand seven hundred and seventy-two dollars and fourteen cents ($32,772.14), with interest thereon from the first day of July, 1895, until paid; also his costs, and that he have execution therefor as at law.

A. B. HAGNER,
Asso. Justice.

The defendant, Henry M. Baker, now, in open court, appeals from the foregoing decree to the Court of Appeals of the District of Columbia, and the penalty of his appeal bond, to operate as a supersedeas, is hereby fixed at fifty thousand dollars.

A. B. HAGNER,
Asso. Justice.

February 17th, 1896.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS *vs.* HENRY M. BAKER. } No. 12263. In Equity.

The President of the United States to Horace S. Cummings, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Co-

lumbia on the 17th day of February, 1896, wherein Henry M. Baker is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 18th day of February, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 18 day of February, 1896.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
Attorneys for Appellee.

Memorandum.

1896, M'ch 2.—Bond for appeal filed.

Order to Make Up Record on Appeal.

Filed March 4, 1896.

In the Supreme Court of the District of Columbia, the 4th Day of March, 1896.

HORACE S. CUMMINGS
vs.
HENRY M. BAKER. } Equity. No. 12263.

The clerk of said court will please make up the record for the Court of Appeals according to the stipulation filed herewith, dated March 2, 1896.

S. R. BOND,
Attorney for Defendant.

Stipulation as to Record on Appeal.

Filed March 4, 1896.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Complainant,
vs.
HENRY M. BAKER, Defendant. } Equity. No. 12263.

An appeal having been taken by the defendant to the Court of Appeals of said District from the decree passed in this cause February 17, 1896, and a printed record in the cause having been filed in said Court of Appeals upon a former appeal by said defendant: It is hereby stipulated and agreed that said printed record may

be read and used upon the hearing of the appeal from said decree of February 17, 1896, and that said record, together with a transcript of the papers filed and the proceedings had before the auditor and the subsequent proceedings in this court, shall constitute the record for the hearing of the present appeal in said Court of Appeals.

H. O. CLAUGHTON,
FRANKLIN H. MACKEY,
Solicitors for Complainant (Appellee.)
S. R. BOND,
Solicitor for Defendant.

March 2, 1896.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 86, inclusive, to be true copies of originals in cause No. 12263, equity, wherein Horace S. Cummings is complainant and Henry M. Baker is defendant, as the same remain upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 11th day of March, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 565. Henry M. Baker, appellant, *vs.* Horace S. Cummings. Court of Appeals, District of Columbia. Filed Mar. 28, 1896. Robert Willett, clerk.

WEDNESDAY, *May* 6, *A. D.* 1896.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 565.

The argument in the above-entitled cause was commenced by Mr. S. R. Bond, attorney for the appellant, and was continued by Mr. H. O. Claughton, attorney for the appellee.

THURSDAY, *May 7th, A. D.* 1896.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 565.

The argument in the above-entitled cause was continued by Mr. F. H. Mackey, attorney for the appellee, and was concluded by Mr. S. R. Bond, attorney for the appellant.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 565.

Opinion of Court.

Mr. Justice MORRIS delivered the opinion of the court:

This is a proceeding in equity for the settlement of partnership accounts.

Upon a former appeal in the case we affirmed a decree of the supreme court of the District of Columbia which declared void an alleged agreement between the parties and ordered a reference to the auditor of that court for the statement of an account between them. (See Baker *v.* Cummings, 4 App. D. C. 230.) Upon the reference thereafter had, the auditor found the sum of $27,916.57 to be due from the appellant to the appellee, with interest on $27,350.09 thereof from September 1, 1889, the date of the final dissolution of the partnership, to July 1, 1895, and on $566.48 thereof from October 30, 1890, when it was shown to have been actually received by the appellant, to July 1, 1895. The date of July 1, 1895, seems to have been adopted by the auditor as the date to which he would calculate the interest, for the reason that it was expected that, on or about that day, the court would act upon his report, which was filed on June 18, 1895. The total amount of the interest thus calculated was $9,731.13; and this added to the principal made a total sum of $37,647.70 due from the appellant to the appellee as of the date of July 1, 1895.

Exceptions were taken to the report by both parties; but at the hearing these were all overruled, and the report was ratified and confirmed. The court then proceeded to enter up a decree in accordance with the report. But it seems that it was about to keep open a certain matter of controversy between the parties, wherein the fees or profits did not appear to have been fully collected by the complainant, who was the person charged with the management of that portion of the partnership business; and thereupon, the complainant, being desirous of an absolutely final decree and termination of the litigation, consented in open court to a further allowance of $4,875.56 in favor of the appellant, which, in addition with the amount allowed by the auditor in the same connection, constituted the total amount of the principal sum or fee claimed therein by the appellant. This further allowance was accordingly deducted from the aggregate amount of the principal and interest, as found by the auditor; and a decree was rendered in favor of the complainant, the appellee here, for the sum of $32,772.14, being the balance of the account, with interest upon such balance from July 1, 1895, until paid, for which execution as at law was awarded. From this decree the defendant has appealed to this court.

There are eight assignments of error. Six of these, it is conceded, were made upon the former appeal, in which they were decided adversely to the appellant. By their renewal here it was not sought to renew the discussion of them, but only, it seems, to preserve them

for another tribunal. Only the seventh and eighth assignments were argued at this hearing. By comparison of these assignments with the seven exceptions taken by the appellant to the auditor's report, it will be seen that several of these exceptions have been waived or abandoned.

By the exceptions here insisted upon and the assignments of error thereupon based, two questions are raised: 1st. Whether the appellant is entitled to compensation for his personal services in the prosecution of certain claims constituting part of the partnership business and comprising the most important element in the accounting between the parties; and, 2d, whether it was proper to allow interest in the decree from July 1, 1895, on the aggregate balance of principal and interest found by the auditor to be due on that day from the appellant to the appellee.

1. With reference to the first question, the auditor in his report has well stated the law and the facts as follows:

"A claim was presented by the defendant for compensation for personal services in obtaining, prosecuting, and collecting these inspector claims on the basis of the difference between one-half and one-third of the net fees, which claim was subsequently amended by the substitution of a claim for personal services in obtaining, prosecuting, and collecting inspector cases subsequent to September 6, 1886, the amount so claimed being forty-two thousand seven hundred dollars, and against the objection of the plaintiff's solicitors I received evidence touching the extent and character of the said services as well as of their value, which testimony is returned with this report. This claim is presented and urged upon the ground that the decree annulling the sale of September 6, 1886, does not restore the status of the partnership as to the inspector cases, but only entitles the plaintiff to an equitable portion of the fees realized in the said cases; and that, in the ascertainment of that portion, the extra services rendered by the defendant in procuring, prosecuting, and collecting these claims after the date of the said sale and assignment and rendered in the belief that the plaintiff had no further interest in the said claims should be compensated for, especially as that belief was apparently acquiesced in by the plaintiff during the entire period. Cases are cited in which extra compensation has been allowed by courts to a surviving or remaining partner for services rendered in continuing and conducting the partnership business after the death or withdrawal of his copartner, but each of these cases is that of an absolute dissolution of the partnership relation. In this case, in my judgment, the decree of the court annulling the assignment or sale has the effect of reinstating the partnership as it existed prior to that sale, as to the inspector cases, and to continue that partnership until the complete or general dissolution, in September, 1889. In this view of the case we must treat this claim of the defendant as that of one member of an active, existing partnership for an extra share of the profits realized from the joint business, on the ground of contributing to that business a greater amount of time and service than his copartner, a claim which cannot be maintained under any authority of text-writers or

adjudicated cases, so far as my inquiry extends. I have therefore to exclude this claim from allowance in my account."

The auditor was undoubtedly right in his conclusion; and the court below very properly affirmed his finding. Any different conclusion would have allowed the appellant to benefit by his own wrong, inasmuch as the pretended sale and transfer to him of September 6, 1886, was his own wrongful act. Exceptional cases there are, of course, in which a partner might justly be allowed extraordinary compensation for his personal services; but no such exceptional case is here presented. The inspector cases, so called, seem to have constituted a portion of the partnership business to which the special attention of the appellant was to be given in any event; and he seems to have done no more in regard to them after the illegal transaction of September 6, 1886, than it was his duty to do if that transaction had never been attempted.

Comment on the extravagant character of a claim of $42,700 as a compensation for personal services in the collection of the sum of $97,820.14, is somewhat precluded by the admission of counsel in argument that they do not seriously contend for that amount, but only that the appellant should be allowed to go before the auditor for *some* compensation for his personal services. We think the auditor and the court below were entirely right in declining to recognize any claim whatever to compensation in the premises.

2. The question in regard to the allowance of interest has been more earnestly and with more plausibility argued than that of compensation for personal services. And this question is not entirely free from difficulty. But it seems to us that we are compelled to follow in this regard the rule laid down by the Supreme Court of the United States in the case of Stuart *v.* Gay, 127 U. S. 518, 531, where that court, by Mr. Justice Matthews said: "The question, however, still recurs whether the rule for computing interest on the debts as the basis of distribution adopted by the court in its decree of January 5, 1884, is correct as a matter of law. On this point, there is no reason for doubt. The decree of sale, as we have already stated, contained no finding of the amount of the indebtedness, nor of the persons to whom it was owing, and no order for its payment as a condition of redeeming the property from the necessity of sale. But the report of the master of April 21, 1876, contained a full and carefully prepared detail of all the items constituting the indebtedness, with a list of the creditors, a classification according to the order of priority in the matter of lien, and a calculation of interest to October 15, 1875, upon all debts, except those embraced in class No. 1, in respect to which special provision was subsequently made showing the total amount then due to each creditor. It is not stated anywhere in the record why the date of October 15, 1875, was selected by the master as a place of rest in the calculation of interest, but it must have been taken as the most convenient day for calculations in reference to closing the report, which evidently required considerable time for its preparation. If the calculation had been made as of the date of the decree for sale, with a view to the insertion therein of the amounts due to the several creditors, on pay-

ment of which the sale might be averted, the interest would have been brought down most properly to that date and added to the principal to constitute the whole sum then payable. If not paid at that time, the aggregate of principal and interest thus combined would have constituted the new principal, which, according to the uniform practice of the court, would bear interest from that date. In that case there could have been no complaint made against compounding interest. We think a similar effect must be given to the decree of the court confirming the master's report made April 28, 1876. It substantially declared the amount due October 15, 1875, as consisting of the principal sums and interests to that date added for the purpose of the sale and distribution. * * * The amounts to be found due necessarily embraced the principal sum with the accrued interest up to a fixed date; and from that period the aggregate became the sum of the debt, the whole of which thenceforth properly carried interest."

The case of Stuart *v.* Gay went up on appeal from the circuit court of the United States for the State of West Virginia; but it does not appear that the statute law of that State had any bearing upon the decision, or that "the uniform practice of the court," referred to in the opinion, meant anything else than the practice of the courts of the United States sitting as courts of equity.

To the same effect is the case of National Bank of the Commonwealth *v.* Mechanics' National Bank, 94 U. S. 437; Connecticut *v.* Jackson, 1 Johns. Ch. 13.

This was also the rule and the practice of the court of chancery of Maryland (Hammond *v.* Hammond, 2 Bland's Chan. Rep. 306, 371–380); although it should be stated that in that State the rule of the common law, or rather of the statutory law in regard to judgments in common-law cases, was, and yet remains, the same as Mr. Chancellor Bland states the rule to be in equity.

The appellant's allegation of error, however, is based upon the fact that, in the District of Columbia, the statutory enactment in regard to interest on judgments at common law, to the analogy of which courts of equity would generally conform, is somewhat different from the existing law of Maryland, and probably from the laws of most of the States of the Union. This enactment, which is section 829 of the Revised Statutes of the United States for the District of Columbia, and which is taken from the act of Congress of June 24, 1812 (2 Stat. 756), provides that "upon all judgments rendered on the common-law side of the court in actions founded upon contracts, interest at the rate of six per centum per annum shall be awarded on the principal sum due until the judgment shall be satisfied, and the amount which is to bear interest and the time from which it is to be paid, shall be ascertained by the verdict of the jury sworn in the case." And this provision has been construed in practice to forbid the compounding of principal and accrued interest in judgments and the awarding of interest on the aggregate amount then ascertained to be due.

But besides the fact that this statute is by its express terms restricted in its application to certain suits at common law, it seems

never to have been understood prior to the year 1891 to have been intended in any manner to influence the practice of courts of equity, which, anterior to the year 1891, seems to have been entirely conformable to that stated in the case of Hammond *v.* Hammond, *supra*, as obtaining in Maryland, and which was inherited by us from that State. In fact, another act of Congress, that of April 22, 1870 (16 Stat. 91), incorporated into the Revised Statutes for the District of Columbia as section 713, would seem to be meaningless in some respects unless it were taken as confirming the previously existing practice in equity. That act provides that "the rate of interest on judgments or decrees, and upon the loan or forbearance of any money, goods or things in action, shall continue to be six dollars upon one hundred dollars for one year, &c., &c."

It is true that, in the case of Washington and Georgetown R. R. Co. *v.* Harmon's Administrator, 147 U. S. 511, the Supreme Court of the United States held that this act did not give interest on judgments where none existed before its enactment. But the act may nevertheless be properly construed to sanction and confirm the practice of equity to award interest upon its decrees, when those decrees already awarded an aggregate sum composed of principal and interest to the date of the decree or to some previous fixed date. And it seems to us that the act must be taken to negative any inference that might be drawn from section 829 and the maxim that equity should follow the law.

To the contrary is cited the case of Spalding *v.* Mason, decided by the supreme court of the District of Columbia in general term on July 10, 1891, and by the Supreme Court of the United States on appeal, at its present term, on March 2, 1896. In that case the special term of the supreme court of the District had done what it did in the case now before us—that is, it aggregated the principal and interest of an indebtedness to the date of the decree, or the date of the ratification of the auditor's report in the case; and then upon that aggregate sum awarded interest thereafter as upon a new principal. The general term modified that decree, so as to award to the complainant only the original principal, with interest thereon from the time at which such original principal should have been paid. The Supreme Court of the United States affirmed the decree of the general term with some modification that does not affect the question here involved.

But we do not understand the final decision in that case to have touched at all the question now before us. It is true that the decision of the general term is directly in point. But the modification made of the original decree by the general term was in favor of the appellant and defendant Spalding; and as Spalding was again the appellant to the Supreme Court of the United States, and as the other party (Mason) did not appeal, the question of the modification made by the general term was not open for discussion by that court, and is not touched upon in the opinion.

It seems to us that the general rule laid down in the case of Stuart *v.* Gay remains unaffected, and that until that rule is modified for

this District by the same high tribunal which announced it, we are bound by its terms.

3. In the eighth assignment of error is presumed to be involved another contention advanced on behalf of the appellant, to the effect that, on the sum of $4,875.56, agreed in open court at the time of the hearing of the case to be allowed by the appellee to the appellant, there should have been also an allowance of interest from the time of the dissolution of the partnership, September 1, 1889. This contention seems to us to be without merit.

Among the partnership assets was adjudged to be the amount received or to be received by the appellee Cummings for his commissions as the assignee of the insolvent firm of H. D. Cooke & Company. It was strenuously contended on behalf of Cummings that these commissions should not be regarded as part of the partnership assets; but that contention was subsequently waived by the action of Cummings, although it was made the subjection of the one exception taken by him to the auditor's report. It was conceded by him in the decree now appealed from by Baker that these commissions might properly go into the accounting.

It does not appear from the record that the appellee has actually received any commissions in the premises; but only that he yet holds some of the assets of the estate of H. D. Cooke & Co. as security for their payment. It appears, however, that he might have collected them, if he had chosen to devote to their satisfaction some of the funds realized which he had paid out to the creditors of the estate; and the auditor has accordingly charged him in the account with these commissions as if they had been actually received by him. The assets which passed through his hands amounted to $104,977.71. On this sum he was entitled by the deed of assignment to commissions at the rate of five per centum, which amounted to $5,248.88. With one-half of this, or the sum of $2,624.44, he was charged by the auditor in the accounting; and against his exception, as already stated, this was ratified and confirmed by the court.

But in his testimony in the case the appellee had made this statement: "The sum that I had expected to charge H. D. Cooke & Co. for services in the assigneeship was $15,000, which was to pay for services and the commissions on the collections and payments; that sum was fixed by me at that amount on the advice of Mr. John C. Bullitt, of Philadelphia, who thought it was a reasonable amount." And in consequence of this statement and of the expectation that the entire charge of $15,000 might ultimately be realized or received by the appellee, the appellant claimed to be entitled to a credit of $7,500 against the appellee, instead of $2,624,44, as found by the auditor. The court below, it seems, was about to formulate the decree so as that it might be left open to the appellant, to apply to the court whenever and if ever any balance of the anticipated fee of $15,000 should be realized by the appellee. But the appellee, as we are told, rather than have the decree remain open, agreed to the allowance to the appellant of the further sum of $4,875.56, required, with the allowance made by the auditor, to make up the whole sum of $7,500 claimed by the appellant. And

accordingly, this further allowance was made in the decree. The appellant, however, is not satisfied with the allowance, without interest upon it from the date of the dissolution of the partnership. He had been allowed interest on the $2,624.44.

The appellant's claim in this regard we consider to be wholly without merit. It is conceded that the appellee has not collected the $5,248.88. It is not shown that he is entitled to it, or that he should have collected it. From this record there is no just ground whatever for awarding that amount to the appellant. It may be that he would ultimately become entitled to it, but only from the time that it would be or should be received by the appellee; and from that time only would it bear interest, if the appellee failed to account promptly for it. Payment of the amount at present gives him more than he could by any possibility be entitled to in the future upon the basis of his claim.

We do not think that there is any error in the decree appealed from; and we must accordingly affirm that decree, with costs. And it is so ordered.

TUESDAY, *May 19th, A. D.* 1896.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 565. April Term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE MORRIS.

May 19, 1896.

MONDAY, *May 25th, A. D.* 1896.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS. } No. 565.

On motion of Mr. S. R. Bond, attorney for the appellant in the above-entitled cause, it is ordered by the court that said appellant be allowed an appeal to the Supreme Court of the United States on giving a supersedeas bond in the sum of fifty thousand dollars ($50,000).

Know all men by these presents that we, Henry M. Baker, as principal, and Samuel F. Merrill and Rufus K. Helphenstine, as sureties, are held and firmly bound unto Horace S. Cummings in the full and just sum of fifty thousand dollars ($50,000), to be paid to the said Horace S. Cummings, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Henry M. Baker, appellant, and Horace S. Cummings, appellee, a decree was rendered against the said Henry M. Baker, and the said Henry M. Baker having been allowed an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Horace S. Cummings, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Henry M. Baker shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY M. BAKER. [SEAL.]
SAMUEL F. MERRILL. [SEAL.]
RUFUS K. HELPHENSTINE. [SEAL.]

Sealed and delivered in the presence of—
WM. K. ELLIS.

Satisfactory.
FRANKLIN H. MACKEY,
Of Counsel for Appellee.

Approved by—
MARTIN F. MORRIS,
Associate Justice Court of Appeals, D. C.

(To operate as a supersedeas bond.)

[Endorsed:] No. 565. Henry M. Baker, appellant, *vs.* Horace S. Cummings. Supersedeas bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed May 29, 1896. Robert Willett, clerk.

UNITED STATES OF AMERICA, *ss:*

To Horace S. Cummings, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Henry M. Baker is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin F. Morris, associate justice of the

Court of Appeals of the District of Columbia, this 29th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

MARTIN F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

Service acknowledged May 29th, 1896.

FRANKLIN H. MACKEY,
Sol. for Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun. 1, 1896. Robert Willett, clerk.

Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 288, inclusive, contain a true copy of the transcript of the record and proceedings of said Court of Appeals in the case of Henry M. Baker, appellant, *vs.* Horace S. Cummings, being Nos. 339 and 565, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 17th day of June, A. D. 1896.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

In the Supreme Court of the United States.

HENRY M. BAKER, Appellant,
vs.
HORACE S. CUMMINGS.
No. 189. October Term, 1897.

It is hereby stipulated and agreed that the record in this case shall be so printed as to give the testimony in the order in which the same was taken, and the clerk of the court is requested to have the printing done accordingly, viz:

As in the printed record filed down to and including the replication on page 18.

Next, complainant's testimony-in-chief, followed by defendant's testimony-in-chief, covering from near the top of page 53 (marginal page 92) to "surrebuttal testimony" near the bottom of page 165.

Next, complainant's testimony in rebuttal, after the replication on page 18, down to and including the certificate of J. Arthur Lynham, examinner in chancery, on page 53.

Next, defendant's "surrebuttal testimony" near the bottom of page 165 to the end of page 167.

After page 167 print as in the present record.

It is further stipulated and agreed that "Exhibit H. M. B. No. 3"

(page 176) may be entitled "List of cases settled in 1886, showing amounts allowed, fees, &c."

Exhibit at top of page 181 may be entitled "Exhibit H. M. B. No. 4, showing cases suspended."

Exhibit at top of page 183 may be entitled "Exhibit H. M. B. No. 5, showing cases in which the contract fees were less than 25 per cent."

Exhibit at top of page 184 may be entitled "Exhibit H. M. B. No. 6, List of cases outstanding."

Exhibit on page 186 (marginal page 333) may be entitled "Exhibit H. M. B. No. 7, List of cases pending."

Exhibit at middle of page 197 (marginal page 356) may be entitled "Exhibit H. M. B. Nos. 10 and 11."

Exhibit on page 200 (marginal page 362) may be entitled "Exhibit H. M. B. No. 12;" and the clerk is requested to have said exhibits entitled and headed accordingly.

Sept. 25, 1897.

S. R. BOND, *Sol'r for Appellant.*
FRANKLIN H. MACKEY,
Sol'r for Appellee.

[Endorsed:] Case No. 16,320. Supreme Court U. S., October term, 1897. Term No., 189. Henry M. Baker, app't, *vs.* Horace S. Cummings. Stipulation as to printing record. Office Supreme Court U. S Filed Oct. 4, 1897. James H. McKenney, clerk.

Endorsed on cover: Case No. 16,320. District of Columbia Court of Appeals. Term No., 189. Henry M. Baker, appellant, *vs.* Horace S. Cummings. Filed June 18th, 1896.

No. 189.
Brief of Edmunds & Bond for Appt.
JAN 5 1893
JAMES H. MCKENNEY
Clerk
Supreme Court of the United States.
Filed Jan. 5, 1893.

October Term, 1892. No. 189.

HENRY M. BAKER, Appellant,

vs.

HORACE S. CUMMINGS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON THE PART OF THE APPELLANT.

GEORGE F. EDMUNDS,
S. R. BOND,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

Henry M. Baker, Appellant,

vs.

Horace S. Cummings.

October Term, 1897.
No. 189.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON THE PART OF THE APPELLANT.

STATEMENT.

The bill in this case was filed on the 1st of February, 1890.

It is alleged that both parties had been for more than fifteen years attorneys at law and engaged in the general practice of their profession in the various courts of the District of Columbia and of the United States, as well as before the executive and legislative branches of the Goverment. It alleged that on or about the 1st of January, 1876, the parties entered into a partnership by parole to prosecute the practice of law at Washington; that "they were thereafter, and until either party should desire to end the partnership relation, jointly to prosecute their profession as attorneys at law as equal partners, each to share equally in all the profits or losses of their joint business." It alleged that the partnership continued until the first of September, 1889, when it was dissolved (Record, pages 1, 2). It alleged that among the items of business of the concern were cases known as

"inspector cases," in which a contract was obtained from claimant for the prosecution of his claim upon a contingent fee usually of twenty-five per cent. It described the method of prosecution, &c. It alleged that the parties, for convenience, devoted themselves to separate parts of their various business, and that accordingly Baker took main charge of the inspector cases. That Cummings had only a general knowledge of the business in the inspector cases, and that nearly all the papers and memoranda relating thereto were in the manual possession of Baker. That down to the 1st of September, 1886, many of said cases had been prosecuted to success, and the money received for the most part by Baker and properly divided (Record, page 2). It alleged that on or before the 1st of September, 1886, many of said cases had been presented and allowed, and appropriations made by Congress therefor; and that Baker was then engaged in collecting the amounts due (Record, page 2). It alleged that Baker "particularly" knew what of said cases had been appropriated for, and also knew that Cummings did not know what the amount of such allowance for said cases was (Record, pages 2, 3). It alleged that beside the cases so appropriated for, there were other such cases in the office as to which no appropriation had been made by Congress, but which were still pending and awaiting allowance; and that there were many other cases that the firm had taken measures to secure and which were afterwards secured by Baker. It alleged that in these respects Baker alone had full and complete knowledge, &c. It alleged that on or about the 6th of September, 1886, Baker requested Cummings to sell to him, for the sum of $15,000, Cummings' interest in the fees earned in the cases appropriated for and in cases where contracts had been obtained and in cases that might thereafter be secured (Record, page 3). It alleged that thereupon "various conversations were had on divers occasions" in respect of the matter, and that at one of the conversations Baker

handed to Cummings "a bundle of papers, which he said contained information upon which the complainant could ascertain the value of said interest" (Record, page 3). It alleged that upon examination of the papers, Cummings was unable to gather therefrom any adequate information without the aid and explanation of Baker, and thereupon he requested Baker to inform him as to the amount due the firm on account of fees earned in these cases and which had been already appropriated for, and also the amount of claims not yet appropriated for (Record, page 3). It alleged that Baker replied that the amount of fees earned and payment of which was already provided for by Congress was but the sum of $20,000, and that the amount of all other claims in said cases not then appropriated for would be about $80,000, and that the expected fee from these would amount to about $20,000 (Record, page 3). It alleged that Cummings relied on these statements and returned the papers relating thereto which had been put into his possession, and said to Baker that he would be willing to accept Baker's offer and to assign, and to receive for his interest in the fees in all of said cases, $10,000 for the cases already allowed, and $5,000 for those not yet allowed; and that he did it solely on the representations of Baker (Record, pages 3, 4). It alleged that thereupon a written assignment was accordingly made, and that Cummings received Baker's check for $15,000 therefor (Record, page 4). It alleged that at the time of Cummings' inquiry as to the amount of claims allowed, &c., instead of there being but $20,000 of fees earned in the cases appropriated for, the sum allowed and chiefly collected was more than $32,000 (Record, page 4). It alleged that very much more than $80,000 of prospective claims and chances existed, but admits that Baker did not know the full extent of these prospective chances; but believes that Baker knew they were very much more than $80,000 (Record, page 4). It alleged that Cummings' "suspicions were aroused soon after executing said assignment as to whether said defendant

had dealt with him fairly in the matter of said inspector cases." It alleged that "it was not until about the 1st of August, 1889," that Cummings ascertained that Baker had "misrepresented the amount of fees earned and to be earned," and that he thereupon demanded restitution (Record, page 5). It alleged that on the 19th of December, 1889, Baker sued Cummings for a balance of $2,000 and more, with a bill of particulars growing out of an account stated in respect of their partnership transactions (Record, page 5). It alleged that this suit at law was not then at issue, and that Cummings could not plead all his defenses in the suit at law, and that "especially as the right of the complainant to have discovery in the premises and to have the said assignment canceled and held for naught" was the basis of his bill (Record, page 5). The bill waived answer under oath, but required a particular answer to two interrogatories confined to mere statistical sums (Record, page 6). The bill prayed that the assignment be declared null and void, and that an account be had (Record, page 6). The bill was sworn to (Record, page 6).

THE ANSWER OF BAKER alleged:—

1. That he declined to avail himself of the privilege of not answering under oath (Record, page 7). It then answered the several paragraphs of the bill *seriatim*. It denied that Cummings was a member of the bar of any of the courts of the District of Columbia, or of the Supreme Court of the United States, except the Court of Claims; and alleged that Cummings had never even made a motion in the Court of Claims or argued a cause there in open court (Record, page 7). It denied that the partnership was formed in 1876, as alleged in the bill, and asserted that it was formed about the 1st of July, 1874 (Record, page 7). It alleged that by the partnership agreement in parole each was to devote his

whole time, &c., to the practice of law in Government cases on equal shares, except that Cummings was to have all the fees in cases he then had on hand (Record, page 8). It alleged that there was no change in these partnership relations until September, 1886 (Record, page 8). It denied that Cummings had, as alleged in the bill, fully performed his obligations as a partner, but that on the contrary he had been for several years named neglectful, and more and more neglectful of the interests of the partnership business; and that Baker complained of this and proposed a dissolution, but that Cummings objected to dissolution and promised to attend more closely to the business. It alleged that he did not do it, except on occasion, and in one particular instance Baker urged Cummings be admitted to practice in the Court of Alabama Claims, and urged him to attempt to get cases therein which would have yielded $25,000 in fees; that Cummings did not do so, but that all the cases they had in that court were argued by Baker, and that Baker did by very far the largest part of the work. It alleged that there were many other instances of a similar character (Record, pages 8, 9). It alleged that owing to this state of circumstances and conduct, Cummings did not, during the last five years and more of the partnership relation, secure to the firm from his services fees to a greater amount than about $5,800, and that that sum Cummings had not divided with Baker, and that it was upon this account that Baker's suit at law had been commenced (Record, page 9). It alleged that Cummings became the assignee of H. D. Cooke & Co. in 1884, on his own motion, and without consulting the complainant (Record, page 9). That thereupon Baker proposed that they dissolve; that Cummings replied that he did not think the matter would take much of his time, and that he would divide his assignee fees as those secured in their practice; that Baker was not satisfied, but, on the earnest entreaty of Cummings, consented to go on for the time (Record, page 9). It alleged, from that time until the dissolution of the partnership in

1889, that Cummings did very little in the joint business, and that so little was done that in the early part of 1886 Baker informed Cummings that he wished to terminate the partnership, and proposed that they settle to that date all receipts and expenses, and that each take as his own all unfinished business arising after January, 1885, and divide all the fees of any business before that time (Record, pages 9, 10). It alleged that Cummings did not consent to this, but proposed to divide the business as of the 1st of January, 1886, if they must dissolve; or that, in consideration of the greater services rendered by Baker, if Baker "would continue with the complainant he would consent to take one-third instead of one-half of the fees collected in the class of cases called inspector cases" (Record, page 10). It alleged that at this stage of the matter Baker offered to buy all of Cummings' interest in the inspector cases, and to pay $14,000 therefor (Record, page 10). It alleged that finally, after full investigation, they closed their relations in respect of the inspector cases, by Baker's paying Cummings $15,000, and giving up all his right to a share in the fees of the Cooke & Co. assignment (Record, page 10). It absolutely denied all the allegations in the sixth paragraph of the bill, and alleged that the inspector cases involved many distinct questions of law and many distinct questions of fact; that Baker did the principal work in the whole of them; that he frequently asked Cummings to assist about them, but that Cummings did not do so to any extent (Record, pages 10, 11). It alleged that Cummings had at all times "full and free access to and use of all the agreements, books, papers, records, and all other memoranda which pertained to or in any manner had any connection" with inspector cases. It alleged that on the occasion of their negotiations respecting the matter, Baker gathered together all the books and papers then in existence relating to the matters, and the Treasury Department registers, and handed them to Cummings for examination and inspection, with the statement that he (Baker) would

explain anything and everything which Cummings might ask about, and that the public documents of which both had complete knowledge would show the whole situation (Record, page 11). It alleged that Cummings took these books and papers, well knowing the appropriation that had been made in respect of them (Record, page 11). It alleged that these books, papers, and documents were everything (except the statutes of the United States) which Baker had used in the inspector cases, and that they were full and ample to enable Cummings to become completely informed of every aspect of the cases (Record, page 11). It alleged that Cummings took these books, papers, and documents away from the office that they jointly occupied, and retained them in his possession for more than two weeks (Record, page 11). It alleged that Baker answered every question asked him by Cummings fully and truly in every respect (Record, page 12). It alleged that at that time Cummings had offered to take one-third instead of one-half the fees in the inspector cases, and that upon that basis the sale of Cummings' interest in these cases was made (Record, page 12). It alleged that on this occasion Cummings said he had been considering the matter, and, if Baker thought it best for him, he would sell out that interest for $15,000; that Baker refused to advise him about what was for his own interest, but offered to give him any information he desired, and said that $15,000 was more than he ought to pay, but that, to end the matter, he would give it, if Cummings wished; that Cummings said he would take it, and thereupon the transaction was closed, Baker giving up all his rights to a share in the emoluments of the Cooke assignment (Record, page 12). It alleged that Cummings had every means in his possession of knowing with absolute precision the amount of fees then earned (Record, pages 12, 13). It denied positively that Cummings ever asked Baker the amount of fees then already earned, and denies positively that he stated to Cummings that the amount of fees then earned amounted to only about the sum of $20,000 (Rec-

ord, page 13). It alleged that he informed Cummings in respect of the cases appearing in the House executive documents, and which of them were those in which they were concerned, and gave him every information asked for about them (Record, page 13). It denied positively the allegation of the bill that Baker represented the cases unappropriated for and within reach as amounting to only about $80,000; and that Baker himself had made no computation relating thereto (Record, page 13). It absolutely denied the allegations in the seventh paragraph of the bill respecting Baker's alleged representations of the amount appropriated for, and all outstanding possibilities, &c. (Record, page 13). It denied every allegation in the eighth paragraph of the bill (Record, page 14). As to the ninth paragraph of the bill, defendant denied every imputation of wrong-doing, or the withholding of any information, and stated that Cummings was furnished with all the documents and papers in existence at that time in respect of the cases; and that Cummings had them in his own separate possession for two weeks or more before they concluded the transaction; and alleged that he believed that Cummings understood the whole situation perfectly. It alleged that immediately after the conclusion of the trade, Baker left Washington for some weeks, and that Cummings took charge of what then became Baker's business about the inspectors' claims, and attended to the payment of the clients of the sums that were being received for their account; and to that end Baker left with Cummings a large number of blank checks, signed, drawn to Cummings' order, in order that the clients might be promptly remitted to; that Cummings during that absence canceled the $15,000 check given on the sale of Cummings' interest, and used three of such checks from the 7th to the 29th of September for the purpose of getting his $15,000 (Record, page 14). It alleged that Baker left with Cummings "six sheets of schedules, on which were entered the names of all the clients entitled to payment from the appropriation, and which were included

in the aforesaid House executive documents Nos. 70 and 225," and which were the cases referred to by Cummings in his bill as having been appropriated for (Record, page 14). It alleged that those schedules contained an accurate statement of the amount allowed to each of said clients, the amount of fees due from each, and the amount to which each client was entitled after the deduction of the fee; and also a sheet No. 7, which showed remittances made and to be made to associate attorneys (Record, pages 14, 15). It alleged that Cummings, " while thus acting for defendant in the matter, made collections and remittances, as is shown by complainant's own handwriting on said schedule, on the 9th and 29th of September, 1886, and on days intervening between those dates." It alleged that during all that time Baker was absent from Washington, and that Cummings " had during all of that time the sole possession and custody of said schedules which showed the entire fees resulting from said cases, then appropriated for and payable, as aforesaid " (Record, page 15). It alleged that on Baker's return to Washington, Cummings returned to him the schedules and the defendant's bank book, unused checks, &c., without expressing in any manner any dissatisfaction with the trade they had made (Record, page 15). It alleged that afterwards, and while the partnership continued, their joint business went on, one and the other collecting fees, &c., and that Baker tried to secure an adjustment and settlement thereof without success (Record, page 15). It alleged that they thus went on until the 1st of August, 1889, when Baker insisted that they must have a settlement and a dissolution (Record, page 15). It alleged that that was the first time that Cummings expressed to Baker any dissatisfaction with the sale of September, 1886 (Record, page 15). It alleged that then, for the first time, Cummings showed the defendant a paper, dated September 7th, 1886, the next day after the sale of Cummings' interest in the inspector cases, entitled " Thoughts in mind for the last few days " (Record, page 15).

It alleged that Baker, having heard the paper read, denounced Cummings for having had such a paper for three years and during all the time occupying the same office, and not communicating its contents or the ideas it implied to Baker (Record, page 15). It alleged that Baker wrote a reply to said paper, which he wishes to have produced at the hearing (Record, page 16). It alleged that Baker's suit against Cummings was based upon an account stated between the parties, and that several items therein were personal and not partnership; and that some of the entries in said account stated were in the handwriting of Cummings, and written by him at the time of stating the account (Record, page 16). The answer also insisting upon laches and upon the Statute of Limitations (Record, page 17).

The answer was traversed, and testimony taken consisting, in all essential parts, of the sole testimony of the two parties.

This testimony, as given by both parties, showed that both parties agreed—

I. That they were joint and equal partners in prosecuting Government claims, &c., beginning in 1874 instead of 1876, as Cummings swore in his bill.

II. It showed that Baker did by far the largest share of the work and gained by far the largest part of the fees of the joint concern.

III. It showed, as testified by both parties, that Baker was anxious to dissolve the partnership for these reasons.

IV. It showed, as testified by both parties, that on the occasion of the sale in 1886, when Baker insisted upon dissolving, Cummings was willing and desirous to continue the partnership on the basis of his receiving one-third of the fees, as well those already earned as those which might afterwards be secured, for the obvious reason that Baker furnished

the chief resources of the partnership, and Cummings therefore did not wish to dissolve it.

V. It showed, by the testimony of both parties, that on September 6th, 1886, all the papers and documents then in existence relating to their affairs in respect of the inspector cases were put into the personal possession of Cummings, and that he had them for a considerable length of time, for the purpose of study and inspection, with a view to the proposed sale of his interest.

VI. It showed that the very next day after the sale was made, and for three weeks thereafter, during Baker's absence, Cummings had in his possession and worked upon the very schedule that showed in and of itself the whole number and amount of the cases that had been appropriated for and the sums due to each of the clients, and the fees to be retained in respect thereof; and that he made entries in this schedule and drew checks of Baker, from the signed blanks left with him, accordingly.

VII. It showed, from the testimony of both parties, that while the partnership continued, with both parties in the same office and room, Cummings never made any complaint in respect of the transaction for nearly three years, and never until Baker insisted upon the final dissolution of the firm.

VIII. It showed, from the testimony of both parties, that Baker declined to give Cummings any advice or suggestion in respect of what was for Cummings' interest in respect of the transaction; but that Baker distinctly informed Cummings that, with all these papers and information, he must judge for himself what he would think it best to do, but that Baker would explain any matter Cummings wished.

So far, the testimony of both parties substantially agrees.

In respect of the allegation in the bill that Baker represented the fees earned to have been only about $20,000, and the amount of cases in which fees might possibly be thereafter earned, the answer positively denies that any such representation, or any representation of that nature, was ever made; and the testimony of Mr. Baker is equally positive in the denial.

There is no proof of any kind tending to support the statement of Cummings on this point, but the surrounding circumstances wholly rebut it, for the very next day after the conclusion of the transaction in which Cummings alleges these representations were made, the schedule before mentioned, which showed that the fees then earned (if they could all be gotten) amounted to a little more than $31,000, was and continued to be in Cummings' possession and use. This schedule, as appears from the testimony of Baker, was not in existence at the time the papers and documents relating to the subject were taken from the office by Cummings for examination, two or three weeks before; but every fact appearing in the schedule appeared in the papers and documents Cummings had taken; and the schedule was only a sheet made up in a condensed form showing the clients entitled under the appropriation which had then been made, the sums to which they were entitled, and the fee to be deducted, &c.—made up obviously for immediate convenience for the prompt transmission of the sums to be sent to clients when their powers of attorney to receive payment should have been received, and the money obtained from the Treasury.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing the bill for want of equity.

2. In finding, by implication or otherwise, that Baker made any untrue statements to Cummings.

3. In finding, by implication or otherwise, that Baker concealed or withheld any material fact or circumstance connected with the transaction from Cummings.

4. In decreeing any relief whatever to Cummings.

5. In not holding that the case was governed by the Statute of Limitations, or the analogy to that statute followed by courts of equity.

6. In not holding that the laches of Cummings were fatal to the maintenance of the suit.

POINTS.

I. The evidence altogether failed to establish any misrepresentation on the part of Baker. It is true Cummings says Baker told him that only about $20,000 of fees had been earned, and that only about $80,000 of claims not settled and appropriated for by Congress were in their hands. Baker, in his answer and in his testimony, positively denies making any such representation or anything like it. There is no proof, or pretense of proof, in support of this allegation of Cummings. The evidence, aside from the mere statements of the two parties, clearly confirms Baker's statement, for both parties agree that nearly or quite three weeks before the sale on the 6th of September, 1886, Cummings had in his possession, for the purposes of examination, all the papers and documents relating to the affair, which papers and documents would show precisely and easily the number of cases for which Congress had made appropriation that were in the charge of the firm. These papers would show the

amount that each claimant was entitled to, and both parties knew and the papers showed the percentage of fee to be deducted from the claim. These papers showed that at that time a little more than $31,000 of fees had been earned, which would be available if all the clients would send powers of attorney to draw the money from the treasury. Cummings' own evidence also, as well as that of Baker, shows that on the next day after the sale, Baker placed in Cummings' hands the schedule sheet (which had not been made up at the time the other papers were delivered to Cummings), which contained a complete tabulated statement of each claim that Congress had appropriated for, what, if any, money had been received upon it, what remittance had been made to the client, and in fact everything (Record, page 23). This paper, together with the other papers and documents, remained from that day for about three weeks in the sole possession of Cummings, who was during all that time carrying on the business of these cases for Baker, in Baker's absence from Washington; and Cummings himself made several entries in that very schedule of the same kind as those existing when he received it. It is impossible to believe, therefore, that Baker made these false representations alleged in the bill as to the amounts of these claims and allowances; for he would know that the very papers he had put into the hands of Cummings for examination would show that such a statement was untrue, and that Cummings would ascertain its untruth on a moment's examination. It is also impossible to believe that the very next day after such a supposed gross misrepresentation, Baker should have deliberately placed in Cummings' hands the schedule for Cummings to use, as his agent, which also showed separately and in personal detail that the fees earned amounted to more than $31,000. The bill must fail, therefore, so far as it is founded upon personal misrepresentation.

II. The bill cannot be maintained on the ground that Cummings was misled as to the amount of these claims and fees, whether by himself or by circumstances. Cummings was a man of just as much experience in life as Baker, and with a mind just as well trained for intelligent investigation and defense of his own interest as was Baker's. All that Cummings lacked was a sense of his partnership duty and a disposition to do his share of the partnership work. He was not misled, even by himself, for he worked in the inspector cases more or less from time to time in the office, and had, in common with Baker, the Treasury registers, the House reports, and copies of the letters sent to claimants soliciting business, the powers of attorney, &c.; and, as we have stated in the preceding point, he had, immediately after the sale, the condensed statement which showed the very truth, and acted upon it for Baker's benefit, after the sale. When Baker returned, about the end of September, 1886, Cummings does not pretend that he made any complaint or other suggestion to Baker on the subject of the amount of fees earned being greater than $20,000, or on the subject of outstanding possibilities in respect of claims which were more than $80,000.

The only possible pretense of Cummings being misled is the fact that both parties testified to, that Baker refused to advise Cummings as to whether he thought it was for Cummings' interest to take $15,000 for his interest in the inspector cases, but said that $15,000 was more than he could afford to pay. It is claimed from this statement that because the fees then already earned amounted to more than $31,000 (although all of them had not then been collected) Baker was not stating truly that $15,000 was more than he could afford to pay. Reserving the point that this statement, if incorrect, was not one which would justify setting aside the sale, it is insisted that this statement of Baker's opinion was true. The evidence of both parties shows that during this long partnership Baker had been the principal

fee winner for the concern, and had done by far the largest part of the work; and it is manifest that in morals and justice Cummings was not entitled to a half share in the fees. Baker wished to dissolve the partnership. It appears from Cummings' own testimony that "from the first part of '86 up to September of the same year, he (Baker) frequently broached the subject, but nothing was done one way or the other. In August, 1886, he became very strenuous and said that he wanted this thing settled" (Record, pages 20, 21). "This thing" was their partnership relation, which, as appears from the testimony of Baker, Baker had wished and tried to terminate for many months before this sale, but which Cummings was unwilling to assent to, although, of course, either party had a right to terminate the partnership. In this state of things, Cummings proceeds to say: "Mr. Baker, I make you this proposition: I will take one-half fees in all the cases in which we have powers of attorney and contracts prior to the 1st of January, 1886, or I will take one-third of all the fees in all the cases" (leaving him two-thirds), "or I will take $15,000, as you offer, according to what you think is best for me" (Record, page 21). Baker, as he ought, declined to advise; and Cummings says that this offer of Baker was before Baker had given him the papers and documents, so that Cummings had these propositions under consideration for weeks before the trade was concluded. This offer also included, as both parties agree, the giving up by Baker of his half ($7,500) of the fees, &c., earned and to be earned by Cummings in the Cooke assignment, so that what Cummings really got on that occasion was $22,500; and he got also—quite as important as the money consideration—the consent of Baker to go on with the rest of the partnership, and not to dissolve it. The partnership, as to the other affairs, did go on from that time until August 1st, 1889, when the partnership was dissolved by mutual consent (Record, page 15). Cummings himself says in his testimony that he "had no reason to be dissatisfied

with the sale until the summer of 1888," and until he "discovered that there were over $200,000 of [possibility] cases, when, according to his representation to me, there was only $80,000." This alleged representation was not proved. These cases, it will be remembered, were prospective chances, in only about one hundred and fifty of which had any powers of attorney been obtained down to the time of the sale, and they were cases which had not been allowed in the Department, and for which Congress had made no appropriation, and did not make any for a long time after the sale. It was then for the first time, according to Cummings himself, when he saw that Baker was getting large amounts of fees, that he concluded to be dissatisfied with what had been done in the sale of 1886. Cummings himself also says: "I knew enough to be posted in regard to these claims" (Record, page 41). Cummings also says that after the sale of 1886 there was very little done, because Congress had refused to make appropriations for the year 1886–7 (Record, page 43).

When the partnership was dissolved, or soon afterwards, an account was stated between the parties, on which a balance of $2,700 appeared to be due to Baker (Record, page 67). This balance was not paid, and on the 19th of December, 1889, Baker sued Cummings to collect it; and when the suit was about to be brought to a state preparatory for trial, when Cummings must answer or have judgment against him, the bill in this case was filed on the 1st of February, 1890.

III. It is insisted that the principles of the Statute of Limitations should apply. This limitation was, by the law of the District, three years. The partnership, so far as it regarded the inspector cases, was confessedly terminated on the 6th of September, 1886.

The continuance of the partnership in respect of all other matters can have no effect upon the question respecting the rights and duties of the parties connected with the inspector

cases. It is precisely the same as if their partnership had consisted solely concerning inspector cases, and had terminated under the circumstances before adverted to. It is, of course, admitted that the Statute of Limitations will not apply in equity in cases where there had been any substantial misrepresentation or concealment by one party in respect of the rights of the other until the wronged party discovered, or had the means of discovering, the wrong.

We have shown that there was no misrepresentation of any fact. We have shown that Baker refused to advise Cummings as to whether the trade would be a good one for him. We have shown that the trade was in fact—measured by the standard of mere justice—a good one for Cummings. We have shown that, viewed in the light of his legal rights in the partnership, he sold his interest in these particular cases for all that they were then worth and for an *additional* consideration in the continuation of the partnership in respect of all their other affairs. We have shown that Cummings had the intelligence and the means in his own hands, from time to time and all the time, of knowing precisely how much had been earned at the date of the sale, and that he did know it certainly the day after, and that he had the same intelligence and means of knowing precisely, and undoubtedly did know, the number and amount of the prospective cases that were then in the hands of the firm.

What right had Cummings, under such circumstances, to lie by for years and years and wait until he was about to be compelled to pay the balance of the account stated, and then bring his suit? Cummings was not at a distance; he was in the same office all the time. He was carrying on with Baker the continued partnership affairs; he was, according to his own statement, assisting Baker from time to time in prosecuting and collecting the prospective cases for which later appropriations were made. He was an astute man, and kept track in his private minutes of everything. One of these private minute papers he brought to light for the first time

when the partnership was about to be finally dissolved. This paper appears in the Record at page 79. Cummings swears that he wrote that paper at its date, September 7th, 1886. Some of its statements are manifestly untrue, as, for instance, in respect of the formation and change in the terms of the partnership in 1875–76. In the paper he says that Baker first made the proposition about the inspector cases in January, 1886, seven months before the trade was concluded (Record, page 80). He says, truly, that he told Baker that he recognized that he had done more manual work for the firm during the last eighteen months (Record, page 81). He says that the inspector business was perfectly simple, and could be done by a woman, in large part. He says that on the 19th of August Baker again pushed the subject, and that he replied that he didn't believe in any such thing; that he didn't know what powers of attorney they had, &c.; and that Baker said, "There are the powers; pick them out." He says he tried it, but could not make any headway, and that he had been kept in ignorance of their condition. He says that "Baker always keeps the powers or contracts locked up," &c. This was untrue. The testimony of both parties shows that they were locked up at night in a desk, just as all such things are, and that during business hours they were on their desks and frequently examined by both of them. He then says that Baker is still persistent; that he doesn't want to have trouble with him, and that, to please him, he has made up his mind to do what he considers an unjust thing to himself. This shows that he knew, or thought he knew, what the state of things was that he conceived would produce an injustice if they traded on the basis proposed; that he offered to do one of three things, leaving Baker his choice; but that he depends on Baker's taking his choice in a way that Baker should think best for him (Cummings) (Record, pages 81, 82). He does *not* say, what he is forced to admit on his examination as a witness, that Baker declined to give him any advice, and told him

that he must judge for himself. He says that if the allowed and paid cases give more than, say, $25,000 fees, that Baker has deceived him, &c. *On that very day and at that very time, according to his own testimony, Mr. Cummings had in his possession, control, and use, as the agent of Baker, a complete schedule of all the allowed and appropriated for cases, so that at the very moment of his writing this private memorandum he knew that he was writing it untruly.*

We do not call the attention of the court in detail to the particulars of this paper referring to alleged intrigues with Department officers and judges further than to say that when Mr. Baker was informed of these pretended performances he reproached Cummings for such misbehavior. Most, if not all, the officials referred to are dead. We believe these tales to be pure inventions, or else to be grossly perverted statements of interviews in which the officers and judges referred to said nothing improper, and whose only fault was—if any such interviews occurred—that they did not turn Cummings out of doors. Regretting to be obliged to put in print even a reference to the gentlemen referred to, it is our duty to do so to the extent we have, in order that the court may see the kind of man that Cummings describes himself to be, and to ask the court to consider how far any statement of his, either of fact or of motive, can be relied upon as true or just.

It is evident from the history of these transactions, to which we have referred, that Cummings himself knew that he had received all, or more than all, he ought to receive in respect of the cases for which Congress had at the time of the sale made appropriations; and that it was at last only in reference to the appropriations and cases that had not been adjudicated or obtained which occurred long after the sale that he took an opportunity to determine whether he would endeavor to break up the trade or not. If the future cases should turn out to produce small results, or none at all—if Congress should refuse to appropriate, then, in his mind, it

was good trade ; if it should finally turn out, after years, that enough further cases should be obtained and proved up, and enough appropriations made to make the receipts of Baker quite large, then Cummings would insist that he had been defrauded ; if it should turn out the other way, then Cummings would be satisfied that he had made a good trade. He, all this time, went on in the partnership respecting the other affairs, in possession of the same office and room, helping Baker from time to time in respect of these inspector cases then owned by Baker, and waiting his opportunity to determine in which way he could make the most money. He says, when asked, "You were waiting for the Statute of Limitations to bar the whole transaction ?" Answer: "I was not, sir ; *I kept that pretty well in view.*" This is the suitor who invites a court of equity to treat him as an innocent and deceived partner, kept in ignorance of his rights for a period of more than three years, and who asks the court to say, in the face of this history, that he is entitled to relief.

IV. The circumstances to which we have already referred bring the case distinctly and fully within the established rules of courts of equity in respect of laches. It is not necessary to refer to the great number of cases upon the subject. As applied to the particular conduct of Cummings, however, we beg to quote the language of the court in Hollingsworth *vs.* Fry, 4 Dall. 345, "Equity will not suffer a party to lie by till the event of the experiment shall enable him to make his election with certainty of profit one way, and without loss any way." This sort of conduct is precisely what Cummings himself describes himself as endeavoring to carry on. He must wait and see how much should be got by Baker's fishing in the sea of claims, and what could be gathered into the nets of appropriations and contingent fees, and keeping the Statute of Limitations always in mind, until he could make up his mind whether it was best to assail the trade or to be satisfied with what he had already got.

It may be added that laches does not depend necessarily on the limitations of a statute. They may destroy any right, or pretended right, within periods much within the Statutes of Limitations. Haywood *vs.* National Bank, 96 U. S., 611. Cummings took charge of the inspector business for Baker on the next day after the sale. He had all the papers of every kind in his immediate control and use. He canceled the $15,000 check, and on three different occasions drew $5,000 in payment for the sale. He carried on the business for weeks and weeks as agent for Baker. He had the means, in the public records and documents and in the powers of attorney, of knowing all the chances for the future. He saw they were small, for Congress would not appropriate. He studiously and intentionally concealed from Baker any discontent that he pretends he felt, and waited for the uncertain chances of the future to enable him to decide how he could make the most money; and waited until after the stated account of the partnership transactions showed him indebted to Baker to a considerable amount, and until after Baker had sued him for it, before he found that he was sufficiently wronged to bring this bill.

V. We submit also the following suggestions and references to the proofs, separated under different heads, of these transactions, which we think may be more convenient to the court, as follows:

CONSIDERATIONS AS TO THE REAL BASIS UPON WHICH THE SALE OF SEPTEMBER 6, 1886, WAS MADE, AND UPON WHICH MR. BAKER CONSENTED TO CONTINUE THE PARTNERSHIP AS TO BUSINESS NOT INCLUDED THEREIN.

That the negotiations which culminated in the sale of September 6, 1886, were for a long time under consider-

ation, is fully shown by the testimony. Mr. Cummings says (p. 20): "From the first part of 1886 up to September of the same year he (Baker) frequently broached the subject." * * * "In August, 1886, he became very strenuous." In his testimony (p. 59) he says, "Mr. Baker, in January, 1886, began talking about those cases that he had done the most work in, and that he thought that he should have the most fee. He proposed then that he should have all the fees in the cases taken since the 1st of January, 1885. * * * After that, I should say some time in August, 1886, he still insisted on some sort of a trade. *I did make the proposition to him* that I would take one-half of the fees in cases held by us prior to January, 1886, because it was in January, 1886, that he first made any complaint, *or that I would give him two-thirds of all the fees in the inspector cases irrespective of when they were taken*, or that I would take $15,000, as he thought best for me." On page 21 of his testimony he says the same in substance. He there says he said, "*Mr. Baker, I make you this proposition:* I will take one-half fees in all the cases in which we have powers of attorney and contracts prior to the 1st of January, 1886, *or I will take one-third of all the fees in all the cases* (*leaving him two-thirds*), or I will take $15,000, as you offer, according to what you think is best for me." In various forms these alternative propositions are stated substantially the same throughout the testimony of Mr. Cummings. Mr. Baker corroborates Mr. Cummings as to these points (pp. 93 and 94, 98 and 100). It is, therefore, proved by the testimony of both parties that the trade was under consideration from January to September, 1886, and that its preliminaries were especially under consideration during the month of August preceding the sale of September 6, 1886.

It should be noted that according to his own testimony the proposition upon which the trade was made came from Mr. Cummings (pp. 21, 59), who is now seeking to have the bargain set aside. That the trade was made upon the

propositions he submitted, is equally proved by the testimony of Mr. Baker (pp. 97, 98, 121). Upon these two points they are agreed. It is also specifically stated by Mr. Baker (p. 94), and nowhere denied by Mr. Cummings, that he (Cummings) elected to take the $15,000 in cash. Mr. Baker had previously suggested a dissolution of the firm and a division of the business in hand upon the first day of January, 1885. This Mr. Cummings had refused, but had suggested the date of January 1, 1886, instead. To this Mr. Baker had replied (pp. 93, 99) that it "would not be fair, because he (Cummings) had become assignee of Mr. Cook in 1884, and after that date had devoted practically no time to the affairs of the firm." Here the negotiations as to a given date seem to have ended,—the proposition of Mr. Cummings that he would accept one-third of the fees in the inspector cases, leaving two-thirds to Mr. Baker (pp. 21, 59), taking its place and becoming the basis of the sale of September 6, 1886, for $15,000 in cash and Baker's share of the fees in the Cooke assigneeship (pp. 32, 98, 99, 199, 269). Now, as Mr. Cummings has testified that he offered (pp. 21, 22, 59) "to take one-half of the fees in cases held by us prior to January, 1886" (Mr. Baker to have all the fees in cases after that date), or, that he "would give him (Baker) two-thirds of all the fees in the inspector cases irrespective of when they were taken" (p. 59), and had said, page 21, "I will take one-third of all of the fees in all the cases, leaving him (Baker) two-thirds," and, on page 81, had written, under date of August 26, "I will do *one* of *three* things: I will take $15,000 for my interest, *or* I will take one-half fees in all cases held by us prior to January, 1896, *or* that I will take one-third fees in all cases inspectors," and as has been shown these negotiations began early in the year and were especially active during the month of August, before the sale of September 6, 1886, *is it not evident and conclusive that the bargain, when made, was concluded upon the basis of one-third of the fees to Mr. Cummings and two-thirds of them to*

Mr. Baker? Otherwise, what is the significance of Cummings' proposition to take "one-half of the fees in cases held by us *prior* to January, 1886"? Did it mean, as the court below held, and as the auditor, in pursuance of its decision, has found, that, after all the cases are settled, Mr. Cummings is entitled to *one-half* of all the fees in all the cases up to September, 1889—three years after the sale and three years and seven months after the time fixed by him? Or when, upon his own volition, he proposed at least a month before the sale (and he testified to that fact voluntarily) that he "would give him (Baker) two-thirds of all the fees in the inspector cases *irrespective of when they were taken*," or that he "would take $15,000 in cash," did he mean to imply, as the court below has practically held, that he (Cummings) calculated the $15,000 to be paid him on the basis of one-half fees to him instead of the basis of one-third fees to him and two-thirds to Baker, as he himself had suggested? Which is the natural, legal, and common-sense view of the matter? Besides this, Baker has testified that the trade was made on the one-third and two-thirds basis, as Cummings had offered (pp. 98, 197). It was not in the mind of either of them that Cummings was to receive for his sale to Baker one-half of the then present value of the fees. *It is worthy of notice that, though Baker in his testimony has in one form and another asserted and reasserted that the bargain of September* 6, 1886, *was made and concluded upon the basis of one-third of the fees to Cummings and two-thirds of them to Baker, that Cummings nowhere in his testimony denied that fact.*

These things being so, does it not justly and logically follow that Baker's remark in relation to the payment of the $15,000 in cash for all of Cummings' "interest in and right to fees in the so-called inspector cases," when he said "that is more than I think I ought to pay, but to end the matter I will do it," (p. 121) should be considered and judged upon that one-third and two-thirds basis? The court below places

great emphasis upon that remark and upon the fact that at the time of the sale Mr. Cummings upon the old and superseded one-half basis was entitled to fully $15,000 from the cases paid in 1886. On the one-third basis Mr. Cummings was entitled to a little over $10,000 from the fees of 1886, which is the amount he said (p. 4) he expected from those fees, and that the trade was made on that basis is further evident from the fact that although he says (p. 23) "The amount of the claims that had been adjudicated and which were in the process of collection I *discovered* of course *within a day or two after Mr. Baker had delivered the schedules*," which was only two or three days after the sale, as he had the schedules the next day thereafter by his own admission, yet at that time he made no objection to the *bona fides* of the transaction. This is still further evident from his voluntary statement (p. 133) where he says, "My whole idea as to whether I had made a poor trade or not had nothing to do with the amount of fees received in 1886." *If according to his judgment at that time his share of those fees had amounted to more than the whole payment to him for his entire interest in the inspector cases, would he have doubted whether he "had made a poor trade" or not?* He knew he was entitled to only about $10,000 of those fees, which is about one-third of the net fees, ($31,488.70) of 1886 (p. 98), and hence he said it was necessary for him, before he could determine whether or not he had "made a poor trade," to ascertain, as he repeatedly says in his testimony in one form or another, "the future business that would come in."

The fundamental error of the decision below was in finding fraud or misrepresentation on the part of Baker. This is disclosed by the opinion of Mr. Justice Hagner adopted by the Court of Appeals, in the assumption that Cummings supposed he was getting the present equivalent of one-half of the fees that would be realized and, as the fees in the cases then appropriated for and in process of settlement amounted to $31,488.70, that he was being paid out of his own money.

It is submitted that the " one-half basis " has been shown to have been set aside by mutual understanding and agreement and that the one-third and two-thirds division of fees had been mutually agreed upon as the basis for future settlements before the $15,000 was paid and received.

Baker states (pp. 98 and 99) that he, in addition to the $15,000 paid in cash, also allowed Cummings $7,500 additional, being one-half of the fees Cummings said (p. 32) he expected to receive for services in the assigneeship of H. D. Cooke & Co. (See also pages 197, 201, 229, and 269.) It is admitted that Baker surrendered in part payment whatever those fees should be, and it is certain that after the trade of September 6, 1886, Cummings regarded those fees as wholly his own. While Mr. Justice Hagner in his opinion proceeds upon the assumption that Cummings only received $15,000, yet the decree for an accounting passed by him (p. 201) requires the auditor to credit Baker with one-half of the fees of the Cooke assigneeship, as well as the $15,000 paid him in cash. The auditor allowed Baker (p. 225) only $2,624.44 on that account, but rather than have that matter further contested in this suit *or others* the plaintiff " in open court " (p. 269) requested that the defendant, Baker, be allowed " the further sum of $4,875.56," *making in all* $7,500, *being the full amount Baker claimed*, and the final decree signed by Judge Hagner so ordered. Therefore the *full compensation actually received by Cummings* in payment for his interest in the fees in the inspector cases *was* $22,500 as Baker had uniformly claimed and asserted. Upon the accounting before the auditor it was not claimed that Baker had collected any fees in the inspector cases not returned in the account submitted by him (Exhibit H. M. B., No. 1, p. 259), and the auditor (p. 226) found the net amount thereof to be $97,-820.14.

If after all the fees are secured and audited (and there is no claim that Mr. Baker's prosecution of the cases was not vigorous, persistent, and successful) it is shown that on the

basis of one-third of those fees to Cummings and two-thirds of them to Baker, Baker paid Cummings all that the cases allowed, suspended, pending, unsettled and outstanding *were reasonably worth on the 6th day of September*, 1886, then Baker should be acquitted of any actual, intentional, or unintentional misrepresentation or fraud, and the bill dismissed with costs.

On page 45 of the testimony, Cummings admits that he was furnished with "a list of doubtful or suspended cases." That list was filed (see page 96) and is known as Exhibit H. M. B., No. 4 (p. 179). On page 263 there appears Exhibit H. M. B., No. 2, before the auditor, and shows that on those suspended cases $38,404.31 were allowed, yielding $9,087.08 in fees. On page 96 of the record Mr. Baker testifies that after the trade was completed he offered to sell Cummings those cases for 5 per cent., or one-fifth of the full fee of 25 per cent. *This is nowhere disputed by Cummings and certainly is conclusive of Baker's estimate of their value.* Therefore four-fifths of the entire fees of $9,087.08, which is $7,269.64, should be deducted from the $97,820.14 returned by the auditor, leaving $90,550.50 to be accounted for.

On page 44 of the record Mr. Cummings testified that Mr. Baker gave him "a list of cases also of those persons who had claims, but which he (Baker) had been unsuccessful in getting." By reference to page 96 of the record it appears that Mr. Baker filed that paper as an exhibit, known as H. M. B., No. 6 (p. 182). In the testimony before the auditor (p. 264) there appears an exhibit known as H. M. B., No. 3, which is a list of inspector cases secured by the defendant Baker after the date of the sale of September 6, 1886, and shows the amount allowed and fee collected in each case. This exhibit includes 58 cases and shows that from them $15,134.81 in fees were secured. Of this number 24 names or cases appear on Exhibit H. M. B., No. 6, showing that 34 names or cases were absolutely new, not known by either Baker or Cummings, at the time of the sale, to be

in existence (p. 233), and, of course, should not be used to count against the integrity of either of them. These 34 cases yielded $7,038.35, which being deducted from $90,-550.50 leaves $83,512.15 of fees yet to be explained. The 24 cases appearing on the list (H. M. B., No. 6, p. 182), submitted to Mr. Cummings, resulted in $8,096.46 of fees. At the time of the sale these cases were known to exist, and were supposed to be good. Mr. Baker had tried to secure them and had been unsuccessful. Mr. Baker has testified (p. 233) that he regards the possession of such a list as not worth more than one-fifth of the fee. Mr. Cummings did not dispute the assertion, and it is presumed agreed with it. Probably no one would think that too low. Accepting it as a fair one in determining Mr. Baker's estimate of value, then there should be a further deduction of four-fifths of $8,096.46, or $6,477.17, which being deducted from $83,512.15 leaves $77,034.98 of fees to be explained by Baker, one-third of which is $25,678.33. As has been stated, Mr. Baker paid and allowed Mr. Cummings $22,500, being, after the reasonable deductions above made in estimating the then value of the fees, only $3,178.33 less than a full one-third of the fees as shown by a judicial accounting *after* all the fees had been secured,—a small difference on which to found a bill to rescind a sale acquiesced in without complaint for three years. Is it a sufficient amount upon which to impale the integrity of a gentleman in whom Mr. Cummings himself says he "had every confidence," and concerning whom he testified (p. 28): "As I have often said, that, if I was going to leave the country and be gone four years, I would not hesitate to take all my property and securities and put it down on Mr. Baker's desk and say, 'Mr. Baker, I am going to be gone for some time,' and when I came back again I have no doubt that I would have an entire and true accounting for the whole thing"?

More than this, in Exhibit H. M. B., No. 12, in a letter to Mr. Cummings, dated August 13, 1889—six months before

this suit was filed—Mr. Baker says: "There have been more allowances than I anticipated," and adds, "I am not blamable for that" (p. 199).

As Mr. Baker has incidentally testified (p. 97), it is evident that the cases on file, but unacted upon at the time of the sale, must have been supposed to include and did include many cases similar to those then suspended and which were held to be worth not more than one-fifth of the stipulated fee. A small number of such cases would have reduced the fees so that the amount paid Cummings would have been in excess of one-third of the then probable fees, as shown by a subsequent accounting and made Mr. Baker's words as to what he could afford to pay *literally accurate*. Again, Mr. Baker assumed all the risks pertaining to the cases. They were not small. It is in evidence that for one full year (1887) there was no appropriation for their payment, and that Mr. Baker employed assistance to secure the appropriations, without which there could be no fees. Had Mr. Cummings been paid even the one per cent. fee he demanded for services in connection with the drafts long after the sale (see letters, pages 83 and 164), as per his estimate of $2,800, that alone would have nearly offset the excess of $3,178.33 noted above. Still further, it is to be remembered that the one-third and two-thirds basis is Mr. Cummings' own voluntary offer.

Two prominent and experienced attorneys skilled as such in the prosecution of claims against the Government, and both with *official* service in the settlement of claims in the Treasury Department, Mr. Rutherford and Mr. Butterfield (pp. 241 and 244), estimate the value of fees in cases like those under consideration at less than one-third of the contract fee. Mr. Rutherford says one-fifth and Mr. Butterfield says one-fourth of a twenty-five per cent. fee. Judged by either of those standards, Mr. Baker not only paid more than he could afford, but was foolish to attempt the cases as he did. Certainly there is no justification for holding him guilty of deceit or

fraud, or for requiring him to pay the amount adjudged against him in the court below.

But has not Mr. Cummings testified that Mr. Baker told him that the cases in process of settlement at the time of the sale, September 6, 1886, would not yield over $20,000 or $22,000 of fees, when they did yield over $32,000, and that the subsequent cases would be only about $80,000, when they did amount to over $250,000 with proportionably increased fees? Yes, Mr. Cummings has so testified. The exigencies of his case so required; otherwise he could have no hope of setting aside his formal bargain and sale. Nothing in the whole case sustains his testimony on that point. His own statements as to his propositions of sale (as has been shown above) are contrary to his testimony in that regard, and on many points his testimony is contradictory and absurd. If ever testimony should be suspected on account of self-interest, why should not the doubt be applied to that of Mr. Cummings? The testimony of Mr. Baker squarely contradicts that of Mr. Cummings. He says (p. 97 and elsewhere) that he did not tell Mr. Cummings that the allowances and fees would be as he has asserted he did. We submit that the probabilities are in favor of Mr. Baker's testimony, because his whole conduct, as well as that of Mr. Cummings from 1886 to 1889, sustains the natural presumption that Mr. Baker had acted and was acting in good faith. Had it been otherwise, had Mr. Baker lied to Mr. Cummings in regard to the amount of fees to be realized from the cases settled in 1886, would he, the next day after the sale, have delivered to Mr. Cummings the schedules of fees derived from those cases, and a list also of the payments made to other attorneys, which, if the trade was not made on the one-third and the two-thirds basis, would have convicted Mr. Baker of fraud at once? The statement that the amount of those fees was to be reduced by still other payments to other attorneys is a pure invention of Mr. Cummings, and is nowhere asserted or sustained by Mr. Baker. Here it should be noted that Mr. Cummings

by cancelling the check for $15,000 given him by Mr. Baker, and paying himself with the checks signed in blank by Mr. Baker, as stated in the testimony (pp. 60, 94 and 95)—those checks used in paying himself being three in number, and each for $5,000, dated respectively the 7th, 15th, and 29th of September, 1886, (see p. 60), did on three separate days after the sale and after the schedules were admittedly in his possession—one of those days being more than three weeks after the said sale and delivery of the schedules, and only two days before he expected Mr. Baker to return—approve and ratify the said sale three separate times, two of which were after he says (p. 23) he had discovered "the amount of the claims that had been adjudicated * * * because these schedules contained the name, the amount, *the fee*, and all the data pertaining to each case." And when Mr. Baker returned and resumed his place in the office with Mr. Cummings, he (Cummings) never even hinted to him that he had a suspicion that all was not fair and honest in the transaction concerning which Cummings admits he had full knowledge. There can be no doubt that Cummings then believed himself entitled to payment in proportion to one-third fees only, and that he knew he had been so paid from the fees of 1886. Does the conduct of Mr. Cummings at this time and under these circumstances sustain his assertions or the testimony of Mr. Baker?

Again, if we deduct from the net fees collected by Mr. Baker (p. 226) only the amount of the fees obtained by him in cases *secured after September* 6, 1886, the date of the sale (pp. 263–5), we find as follows:

Total net fees collected.....	$97,820 14
" fees from cases secured after Sept. 6, 1886.	15,134 81
Total fees from cases on file Sept. 6, 1886.....	$82,685 33
One-third of which is.....	$27,561 77
Mr. Cummings was paid.....	22,500 00
Excess of fees collected over payment.....	$5,061 77

Which represents the amount Mr. Baker received for all the risks he assumed of bad cases (p. 236) and generally in connection with the business covering a period of more than three years.

No one can say it is a large compensation or one which is an indication of either concealment or misrepresentation on the part of Baker.

And further let us consider this whole matter upon the basis of the bill as filed and Mr. Cummings' testimony (pp. 3, 4, 21, 22). He says Baker *told him* "that the amount of fees earned, and payment of which was already provided for by act of Congress, was but the sum of $20,000, and the amount of all other claims of said inspector cases not then appropriated for would be about $80,000, in which said last-mentioned cases the expected fee to accrue to the firm would be about $20,000."

If this is correct (see Baker's emphatic denial, p. 97), then Cummings would have been entitled to his share of $40,000 of gross fees, which could not have yielded Mr. Cummings upon the one-third basis over $13,333.33, or upon the one-half basis over $20,000. It has been shown that he received from Baker $22,500—$15,000 in cash and $7,500 fees in the matter of the Cooke estate. If his allegation, as stated above, is true, he must have then known that he was getting the best of the trade and would not have asked advice of Baker (pp. 21, 94, 97) as to it (which Baker refused), for under the one calculation he received $2,500 more than one-half of the alleged stated fees, and under the other $9,166.67 more than one-third of them, and was to have no trouble, labor or risk in connection with them. His own figures prove the falsity of his allegations. No one can suppose that Mr. Baker would have been willing to have paid a cash bonus for the privilege of assuming all the work, expenses, and liability of the cases, yet such must be presumed to have been the fact, if Mr. Cummings' statements are true, as the $15,000 paid him in cash, to say nothing of the $7,500 fees

relinquished to him in the matter of the Cooke assignment, is in excess of the $13,333.33 he had offered to take for his share of the fees, as thus stated by him. His allegations do not stand the test of the facts known to both Baker and Cummings at the date of the transaction under consideration.

MR. CUMMINGS' KNOWLEDGE OF THE INSPECTOR CASES STATED BY HIMSELF.

In the complainant's bill (pages 2 and 3) he states in a general way the basis of those claims. In his direct testimony (pages 19 and 20) he is more explicit, and says: "*It was a matter of simple calculation, knowing the time, knowing the amount that he had received, and knowing the amount that we contended he should receive, to estimate what the amount due to each man was.*"

On page 37 he says he wrote "*as many letters as Mr. Baker*," and that Mr. Baker was absent for weeks at a time, and that he attended to "all the correspondence" then.

On page 41 he says: "*I probably knew, if not as much as Mr. Baker, I knew enough to be posted in regard to these claims.*"

On page 42 he says: "I didn't say that I did as much work as Mr. Baker, *or that I wrote as many letters as Mr. Baker*, but I simply say that I did all that Mr. Baker ever asked or requested me to do."

On page 48 he testified as follows:—

"Q. How did you ascertain the amount that each person cliamed?

"A. Mr. Baker ascertained that by taking the information that he had gathered from various sources—Treasury registers and otherwise—including the time that the man was in service, and seeing the amount that he had received, then calculating the amount that he was entitled to receive under the Revised Statutes, and the difference was the amount that was claimed. Then the whole case was proved up by docu-

mentary or record evidence and there was no testimony taken orally; no testimony taken orally, but in many cases there were filed affidavits of the claimant, stating his services, and that he was on duty at all times and either did service or was ready and present to do service. Many of those affidavits were prepared. I know myself that I typewrited a great many of them that were of the same character except as to the name of the claimant, the time, and the location.

"Q. What I wish to know is this: Were not the several amounts that were found to be due to the respective inspectors made out from the report or documentary evidence in the office of the Treasury Department and the Revised Statutes of the United States?

"A. I expect that they were.

"Q. You know of no other mode of ascertaining the amount of services for which they were to be paid than that I have just mentioned?

"A. I know of none other."

THE CONTRADICTORY TESTIMONY OF MR. CUMMINGS.

I.

In his bill (page 1) Mr. Cummings says that the co-partnership between the complainant and the defendant was formed on or about the first day of January, 1876. On page 19 he says "the date of the partnership" was "in the Fall of 1874." On page 69 he says it was in September, 1874. On page 80 he says that it was in the Winter of 1875–76 that he consented to a full partnership. (See page 87.)

II.

On page 1, in his bill of complaint, Mr. Cummings says, "That the *complainant* and the defendant have, for more than fifteen years last past, been attorneys at law, and engaged in the general practice of their profession in the various courts of the District of Columbia and of the United States, *as well*

as before the Executive and Legislative branches of the Government."

Page 19 he says, "I confined myself entirely and exclusively to the practice of Government claims before the Executive Departments."

On page 29 he says, "I never was admitted to practice in the District Courts in the District of Columbia." On same page he says he was admitted to the bar of the Court of Claims in 1864, which he changes on page 30 to 1874; yet on page 131 he gives the numbers of certain cases in that court which he says he "prosecuted" in 1873, and prepared every paper in them.

Again on page 29 he says he does not know whether or not his name appears on the roll of attorneys of that court.

On page 30 he admits that he had never been admitted to practice before the Court of Alabama Claims or the Supreme Court of the United States. On page 66 he says he was admitted to the Court of Claims "on no man's motion," but "in chambers" by Judge Drake. On page 135 he says he was admitted to the bar of the Court of Claims in June, July, or August, 1873.

On page 149 he admits that since the filing of the present suit (February 1st, 1890) he has applied to have his name put on the roll of the Court of Claims, which was granted, and that he took the oath.

III.

On page 23, referring to Exhibit H. M. B. No. 3, page 174, he says that from it he discovered, of course, within a day or two after he had the schedules, the amount of the adjudicated claims then in process of collection, and he tells the nature and purpose of those schedules and states his doubts concerning the fees represented thereon. On page 132 he says he paid no attention to the schedule and that it never came into his head that there was anything wrong

about it, and on page 140 he testified in regard to the same schedule as follows:

"Q. When did you first look at that paper?

"A. I first looked at the paper near or probably the same day, or the next day, or at the day it was that the first letter came in containing a power of attorney to indorse the draft.

"Q. Then you knew what the paper was, I suppose?

"A. Yes, sir.

* * * * * * * *

"Q. It was just such a paper that, under all the circumstances, you could have made yourself, couldn't you, if one had to be made?

"A. Why, certainly."

IV.

On page 29 he was asked:—

"Q. State, if you please, whether or not the defendant in this cause ever urged you to become a member of the Supreme Court of the District of Columbia, of the Supreme Court of the United States, or the Court of Claims.

"A. He never did, to my knowledge.

"Q. Would you be likely to recall it if he had urged you to do so?

"A. I think I would.

"Q. Did he ever offer to move your admission in any of the courts that I have named?

"A. Not that I know of."

On page 43 he was interrogated as follows:—

"Q. Did Mr. Baker ask you to be admitted to the Supreme Court of the United States and argue that case yourself?

"A. He may or may not, but I presume he may have done it. I don't know."

V.

On his cross-examination, page 31, he was asked about a case at one time pending in the Treasury Department in

which one J. M. Vale was connected, and he denied all knowledge of the case, and said he did not know any attorney by that name.

In his letter to the defendant, dated October 5th, 1889, page 164, he mentions the case, and says Vale was in it.

VI.

On page 46 he was asked as follows:—

"Q. You went all over the papers and books that Mr. Baker had given you while they were in your possession, didn't you?

"A. I did not."

And soon after, page 47, he was asked if he examined certain ones of these papers, and he replied, "If he called it to my attention I examined it, *because I examined whatever he gave me.*"

VII.

On page 20 he testified that after the test cases were decided in the Court of Claims "that no question could be raised *or was raised* by the Department in regard to any of these cases. As I have said, it was like a row of bricks; you start one to going and the rest follow."

On page 58 he testified that "there were a great many cases, as those of night watchmen, deputy collectors of customs, who were doing the duties of inspectors, and inspectors stationed on the Canadian border, of which there were very many who were paid only during the period of navigation; that it required on Mr. Baker's part *a great deal of evidence other than that* that could be gotten from the registers of the Treasury. I know that in case after case I have written for Mr. Baker affidavit after affidavit to be filed in the case by the claimant, showing the time of his service and the place of it." (See also page 149.)

VIII.

Speaking of the collections made by him in 1886, during Mr. Baker's absence from September 7th, 1886, to the first day of October of the same year, which collections were entered on the schedules known as H. M. B. No. 3 (page 174), he said, pp. 22 and 23 :—

"I went on collecting the cases, crediting the amount of fees to Mr. Baker's account, until I collected $5,000 *more of fees.* I then paid myself *out of my collections* a second $5,000 on the 15th of September, 1886.

"Q. By putting the money in the bank?

"A. By putting the money to Mr. Baker's credit in the bank and filling up a blank check of his for $5,000. I collected it and took the money. I then went on *collecting still more,* and on the twenty-ninth day of September, 1886, I paid myself $5,000 more, so that *nearly all* of the $15,000 that I *took in payment I collected* myself.

"Q. From the Department?

"A. *From the Department.* There were deposited in Carson & McCartney's bank, on account of the collections on this specific lot of claims on which I made an assignment to Mr. Baker, at—$128,000.

"Q. Who deposited them?

"A. Mr. Baker and myself, both.

"Q. How much did you deposit?

"A. I could not say. *I deposited over $30,000.*"

Harry O. Wilson, a witness produced *on the part of the complainant,* stated that he is the bookkeeper for Corson & Macartney, bankers. Upon cross-examination (page 160) he was asked, "How much money was deposited to Mr. Baker's credit in that account from September 7th to October 1st, 1886, both inclusive?" After examining the books he replied, "$17,976.57 I make it."

Compare the above with Exhibit H. M. B., No. 3, page 174, and with Mr. Baker's testimony on pages 94 and 95, as follows :—

"The next day, which was the seventh day of September, 1886, I left the city, and was gone until the first day of October of the same year. These cases were then in process of payment, and I left with him a schedule upon which was entered the names of several claimants, the allowance made to each, the fee to be received from each, remittance to be sent to him and a blank to fill in the date of such remittance, the amount of each check sent, the number of the check, and the date of the check, which paper remained in the possession of the complainant from September 7th until October 1st. * * * These sheets show that during my absence the complainant settled thirteen cases which are shown upon these sheets *in his handwriting* and marked on the right-hand side with a blue pencil. These were the cases: Lawrence P. Remur, $63; J. A. Riopelle, $5,452.36; Frank Hesse, $732.03; Joseph H. Riggs, $53; R. A. Bensell, $344; Stephen Sharpe, $1,560.04; James E. Waugh, $680.89; Edwin B. Low, $47.70; Samuel Comer, $877.70; Joseph Hardy, $703.10; S. D. Mix, $1,462.70; Cornelius Bosworth, $1,723.41; and Homer W. Stryon, $4,276.64, aggregating *$17,976.57*, upon which fees were collected to the amount of *$4,494.15*. The first of these collections appears to have been made upon the ninth day of September, and the last upon the twenty-ninth day of September, 1886. There was also a seventh page of these sheets, which showed the amounts paid or to be paid other attorneys for services in these cases. These several seven sheets I file as exhibits in this case."

"(The above-mentioned papers are filed herewith and marked 'Exhibit H. M. B., No. 3'). Page 174."

The above shows that Mr. Cummings did not pay himself either a *first*, or *second*, or *third* $5,000 of fees from his collections deposited in Corson & Macartney's bank, and that the total of his deposits there in Mr. Baker's account was *not* "over $30,000." As the total deposits there to Baker's credit from September 7th to October 1st, 1886, were, according to the testimony of Cummings' witness—the bookkeeper Wilson—only $17,976.57, and as the fees in no case exceeded twenty-five per cent., the actual fees deposited by him *could not have exceeded $4,494.15.*

THE BOOKS AND PAPERS RELATIVE TO THE INSPECTOR CASES.

The complainant in his bill merely states that they "were in the manual possession of the defendant" (page 2). The defendant replied that at all times prior to the sale the complainant had "full and free access to and use of all the agreements, books, papers, records, and all other memoranda which pertained to, or in any manner had connection with, those cases" (pages 11, 12, 14, and 15).

In his testimony in chief the complainant says (page 20) that Mr. Baker "kept all of the records pertaining to them in his own desk under lock and key." Page 20, he admits he had sundry documents. On pages 37 and 38, upon cross-examination, he repeats the lock-and-key story, and was asked, "Did he keep his desk locked any more after the inspector cases were in hand than he did before?" He replied (page 38), "Not at all." Then followed this testimony:—

"Q. No difference?

"A. No, sir.

"Q. Was there any difference in his keeping his desk locked before the sale than after the sale of the inspector cases?

"A. *None at all. He always kept the desk locked, and if it was not locked I had no business to look into it.*

"Q. You are not prepared to say that the key was not taken out of the door?

"A. I don't think the key was in the door, and if it had been I had no business looking in his desk."

* * * * * * *

Page 39:

"Q. Were not the keys to those parts of his desk containing the books and papers relating to the inspector cases usually during office hours either lying on the top of the desk or hanging in some of the locks?

"A. They may have been; but if the desk was unlocked I

should consider that I had no right to go into Mr. Baker's desk and overhaul his papers."

If he would not touch the papers in Baker's desk, why need he complain whether the desk was locked or not?

* * * * * * *

"Q. Were not the schedules of payment made by (to) inspectors kept in the open part of the safe owned by you, and to which at all times you had access?

"A. The schedule of some of the payments were, but whether all I do not know."

Page 40:

"Q. They might all have been there, for what you know?

"A. They might. * * *

"Q. * * * Were not the schedules of payments made in the inspector cases kept in the open part of the safe? * * *

"A. Mr. Baker had a certain portion of the open parts of the safe and I had the same. What he had in the open parts of his I don't know. *I presume that he had the schedules there.*

"Q. Don't you know that these schedules were in the open parts of the safe?

"A. I don't know. They might have been.

"Q. Did you ever see any of them there?

"A. I have seen papers that I supposed were schedules in there. The amount I don't know.

"Q. Was there ever any attempt on the part of Mr. Baker to prevent your knowing all about those cases according to your own sweet will prior to the date you sold your interest in them as per your receipt dated September 6th, 1886? If so, give particulars.

"A. Mr. Baker *was always ready to answer in regard to any specific case that I might ask him*, as when he handed me the big bundle of powers of attorney, somewheres *about the middle or the latter part of August*, to examine into it, he said, '*You can look them over and see what you think of them, and if there is any case you don't understand I will explain it to you.*'

"Q. You didn't understand my question. Were you ever

denied any information concerning these claims by the defendant prior to that date? If so, state how and when.

"A. He never denied me any information in any specific case. * * *

On page 41, the complainant, in reply to a question, said: "* * * *I probably knew, if not as much as Mr. Baker, I knew enough to be posted in regard to these claims, but as to the condition of each claim I knew nothing.* * * *"

As he had just before testified that "Mr. Baker was always ready to answer in regard to any specific case that I might ask him," what has become of his grievance?

On pages 44 and 45 he admits that he had certain books and papers which he kept for "about a week" prior to the sale, and then he was asked, "What books and papers mentioned in the pages 16 and 17 of the printed record (answer to bill, paragraphs 9 and 10) that you didn't get?" He replied, "I never received any list of cases then pending in the Treasury Department except the list of cases that he called 'hung-up cases' or 'doubtful cases' or 'suspended cases.'"

If this answer is correct is it not strange that he did not ask for it, as from the list of "pending cases" nearly all the then probable fees must come? He nowhere claims that he did ask for it or even mention that he did not have it until his testimony is taken.

But did he have it? Let us see.

On page 46 the complainant was questioned in regard to what record was made of the inspector cases as they came into the office and were filed, and he denied all knowledge of them, and was then asked, "You never kept a book of them at all?" He replied, "*Except as Mr. Baker kept them on a sheet of paper in his own possession; but in book form I have never seen them.*"

Then followed this testimony:—

"Q. Did you ever have those sheets of paper that you have mentioned as the way in which they were kept by Mr. Baker?

"A. I may have seen some of them, but never to examine them except for some individual case when Mr. Baker would ask my assistance.

"Q. You went all over the papers and books that Mr. Baker had given you while they were in your possession, didn't you?

"A. I did not."

A reference to the *original* of Exhibit H. M. B. No. 7 (page 184) will show that it consists of sheets of paper of letter size fastened together. The complainant therefore admits that he had it and had consulted it. But if he had not made this inadvertent admission, how could he know he did not have it if he did not go over all the books and papers he had?

Again, page 48, he was asked, "Did you ever ask him, prior to his purchase from you, for any books or papers or any information which would enable you to ascertain their then value?" He replied, "*I never did*, for I never conceived that there was any possible use in it, as he knew the standing." The next question was, "Consequently, then, he never refused to give you any books or papers. Am I right?" And the reply was, "*I think you are right.*"

On page 93 Mr. Baker states the papers Mr. Cummings took to his house before the sale. Mr. Cummings has freely admitted the possession of all of them except the list of "pending cases," and it has been shown conclusively by his own testimony *ante* that he did have that list in sheets as it was kept, as is proved by the exhibit itself.

On page 99 Mr. Baker makes answer to the whole charge of secreting papers or keeping them "under lock and key" as follows:—

"Q. The complainant says in his testimony that you kept the books and papers of the inspector cases under lock and key and that he did not have access to them. What have you to say in regard to that?

"A. The statement is not true. *It has always been my*

custom at night to close and lock my desk. These papers were undoubtedly locked up at night. During the day they were not usually locked, and if they were locked the keys were in that portion of my desk which was *always unlocked, and I never carried them in my pocket.* They always remained on the desk or in unlocked portions of the desk. *There never was a time when the complainant could not have access to those papers at his own volition. When I left the city I always left the keys of that portion of my desk where these papers were.* Those relating to the settled accounts were contained in the safe, which was entirely his, and in a part of the safe which was open and to which he had access at all times. He knew where they were, and he never suggested that he wanted to see any of these papers at any time— that he did not see them. There was no attempt made to secrete them or withhold them from him."

And on pages 108 and 109 he testified as follows:—

"Q. The complainant has said in his testimony that he had no business to look into your desk, even when unlocked. Do you know of his examining matters in your desk during your copartnership?

"A. During that time the usual relations in regard to papers pertaining to a firm which I suppose exist between partners existed between us. I have frequently seen him pick up papers at my desk and go to my desk for papers, to which I never objected, and which I did not suppose was dishonorable on his part.

"Q. Do you know whether or not there was a more appropriate or better place for keeping these papers than the place in which you did keep them?

"A. There was no other place in the office in which they could be appropriately kept.

"Q. Did you ordinarily leave with him when you left the city the keys to that part of your desk where these papers were kept?

"A. I did.

"Q. Did he, prior to 1889, complain to you that he did not have access to these papers?

"A. *He never did.*"

And on page 111 as follows:—

"Q. I wish to recur once more to the sale by the complainant of his interest in the inspector cases to you. Please state whether or not there was, just before or at the time of the same, any fact, any paper or papers or documents that were within your knowledge, touching those cases, from the beginning up to the time of the sale, that the complainant was not aware of.

"A. No paper whatever of any importance in the determination of the value of the cases which he was proposing to sell."

On page 197 appears a letter written by Mr. Baker in August, 1889, in reply to the "Thoughts in Mind," in which he there very emphatically asserted that Mr. Cummings had all the papers relating to the cases in question. At that time Mr. Cummings did not deny it.

AS TO THE SCHEDULES OF PAYMENTS IN 1886, EXHIBIT H. M. B. No. 3, PAGE 174.

On page 21, Mr. Cummings states that he never saw those schedules until after he had sold the inspector cases to Mr. Baker, September 6th, 1866 (page 55), yet on page 34 he testified on cross-examination that he "had no reason to be dissatisfied with the sale to Mr. Baker until the Summer of 1888." And on page 41 he said, "I probably knew, if not as much as Mr. Baker, I knew enough to be posted in regard to these claims."

On page 94, Mr. Baker testified that "the next day (after the sale), which was the seventh day of September, 1886, I left the city and was gone until the first day of October of the same year. These cases were then in process of payment, and I left with him a schedule (H. M. B. No. 3, page 174), upon which was entered the names of (the) several claimants, the allowance made to each, *the fee to be received from each*, remittance to be sent to him, and a blank to fill in the date of such remittance, the amount of each check sent, the num-

ber of the check, and the date of the check, which paper remained in the possession of the complainant from September 7th until October 1st. If I had told him there were only $20,000 in fees in these cases all that he would have had to do to have proved that I had misstated the case would be to have added up six columns of letter page size as shown in the exhibits. I have no doubt he did so add them up, as his testimony indicates. (See page 23.) If so, he must have known before my return, if his testimony is true, just exactly what he claims he did not know."

If Mr. Baker told him there were only about $20,000 of fees from the cases appropriated for in 1886, he was not only guilty of wrong-doing, but was foolish enough to immediately put into the hands of the party he had wronged the positive evidence of it, and leave him in the sole possession of it for three weeks. On the other hand, if Mr. Baker never did tell the complainant that the said fees were only about $20,000, as he testified (page 97), his conduct was natural and just such as would have been expected of an honest man. But if the complainant's testimony is true he is guilty of very peculiar conduct for any one defrauded as he alleges he was. It will not do for him to claim that he did not know, for in his own voluntary direct testimony (page 23) he says, "The amount of the claims that had been adjudicated and which were in the process of collection *I discovered of course within a day or two* after Mr. Baker had delivered me the schedules * * * *and it was hard for me to reconcile the amount of fees that he said and the amount of fees that were on the schedule.*"

Under cross-examination of Mr. Baker he was asked and testified as follows (p. 120):—

"Q. I hand you now a paper marked 'H. M. B. No. 3,' and ask you to state what that paper is?

"A. That paper contains a list of the parties for appropriations made in the year 1886, according to the documents 70 and 225, which were in the attorneyship of Cummings &

Baker, showing the name of each client, the amount allowed him, the fee according to the fee agreement, the amount which should be remitted to him, the date when it was remitted, the amount remitted, the number of the check by which it was remitted, the date of the check and also another sheet which shows, in part at least, the amount paid to other attorneys for assistance in these cases.

"Q. Now, Mr. Baker, would anybody investigating that subject with these papers in his possession have any occasion to look at the documents which you have just been testifying about?

"A. Not if he were satisfied of the accuracy of the other paper.

"Q. In other words, does not this paper about which I am now questioning you contain all the cases of Cummings & Baker that are mingled with all other cases in these public documents?

"A. That paper is supposed to contain them.

"Q. Will you state whether it does or not?

"A. So far as I know, it does accurately.

"Q. Then if this paper had been handed to Mr. Cummings there would have been no need for checking off anything in the other book, would there?

"A. Not except by way of comparison.

"Q. He could have gotten no further information from the Congressional documents in respect of the matters that you were negotiating for than is contained in this paper?

"A. I presume not.

"Q. Why, then, did you not hand him this paper?

"A. *Because I think it was not in existence at that time.*

"Q. When was it prepared?

"A. It was prepared just about the time the drafts began to be issued. It was after the appropriation was made which was directed by documents numbered 70 and 225.

"Q. Have you not already testified that you handed him this very paper the day after the transaction?

"A. Yes; but I was *talking about the time he took the books and papers to his house. These other sheets were lying on my desk, day in and day out, and he saw them.* (The earliest date on Exhibit H. M. B. No. 3 is August 30th, 1886.)

"Q. They were lying on your desk, day in and day out, when?

"A. After the books and papers which I have testified were taken to his house, and then this paper was in use, as the cases were being settled and daily entries were made in it during that time according to their several dates, of which Mr. Cummings had full knowledge in every respect.

"Q. I shall have to be a little more direct. Will you state whether or not this paper was in existence on the sixth day of September, 1886, when this transaction was made?

"A. It was.

"Q. Then when he was asking you for information upon the subject, such as justified you in handing him these public documents to advise himself as to the state of the matter, why was it that you did not hand him this paper?

"A. As I have said before, at that time *I am not certain that that* paper was in existence?

"Q. You are not certain that this paper was in existence on the sixth day of September, 1886?

"A. *I am; but he took the books and papers to his house some three weeks prior to that, at least.*

"Q. But before you consummated that trade with him did you or did you not have this paper?

"A. I did.

"Q. Was he not, up to the very point of accepting your check, still considering whether he would accept it or not?

"A. I do not know. You can ask him about that.

"Q. What took place on the morning of the day when the transaction was consummated?

"A. He came into the office and said he had been thinking it over, and if I thought it was best for him he would take $15,000. I said, I have no advice to give you; *that is more than I think I ought to pay you, but to end the matter I will do it.* He then said he would take the check.

"Q. Where was this paper when that conversation took place?

"A. It was in the office.

"Q. Had you ever handed it to him?

"A. *I am very confident I had.* I cannot say positively.

"Q. Why, Mr. Baker, you have sworn you did not show it to him until the next day.

"A. *I have not.* I have sworn *that I did show it to him the next day,* but not that I did not show it to him before that time. This paper was in use, as the entries on it will show,* for several days prior to that time. *It was there in*

the office, open to his inspection as it was to mine, only that I made the entries in it and he did not. That is all there is of it When that paper was prepared—the exact date—I cannot tell, but it was prepared prior to any date there is on it, whatever that may be.

"Q. Will you please state now whether you are prepared to say that you ever handed that paper to Mr. Cummings or called his attention to it prior to the seventh day of September, 1886?

"A. *I have no doubt on that point whatever.* What transpired as to any individual paper in the office on any given date I cannot tell you, *but I have not a particle of doubt but that Mr. Cummings prepared that first page of entries*† with me from the documents, and that was prepared prior to any date therein of the remittance of a check."

MR. CLAUGHTON:—I want to put on the record an objection to the witness persisting in giving his doubts and opinions in answer to my questions as to facts.

MR. JOHNSON:—The witness has promptly, fully, and explicitly answered your questions, as the record will show.

MR. CLAUGHTON:—You have nothing to do with this witness now.

MR. JOHNSON:—I have the right to make any objection now, and have the right to put it upon the record.

MR. CLAUGHTON:—I have tried my best to get the witness to answer the questions.

MR. JOHNSON:—I say that his answers are full and complete, and that is the reason you object to them.

MR. CLAUGHTON:—That is an impertinent interference on your part. I am examining this witness in the performance of my professional duty.

MR. JOHNSON:—And I am here also in that capacity, and I want the court to know that I am here.

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* The first entry is August 30th, 1886, page 174.

† The first page of entries refers to the fact that the statement was on a double sheet. The first page of it included the "Name, Allowance Fee, and Remittance."

MR. CLAUGHTON:—When I ask you a question again, I request you to make an answer and not a speech.

"Q. Are you prepared to say that before the assignment of the inspector cases was made to you by Mr. Cummings you placed in his hands or called his attention in any way to this document about which I am now examining you, H. M. B. No. 3?

"A. *In my own mind I have no doubt I did so do.*

"Q. Do you recollect that you did so do?

"A. *I have no doubt that I did it. I do not remember.*

"Q. Do you recollect that you did so do?

"A. *I have no doubt of it.*

"Q. Do you recollect that you did so do?

"A. *I do not remember the day or the hour, but I have no doubt of it.*

"Q. Why have you no doubt of it?

"A. *Simply because it was in the natural order of things. I had nothing to conceal and attempted to conceal nothing.*

"Q. Mr. Baker, you have in your testimony distinctly sworn that you put this paper in his hands the next day, when you were about going from the city, and at that time he had the paper which, if he had had any judgment or discretion, would have given him the information in respect to these fees. Now, with this testimony before you, are you prepared to say that you have no doubt the paper was placed in his hands before the transaction was made?

"A. I did not use the language of the question in my testimony, *but I repeat my answer just given.*

"(And thereupon counsel for the complainant read from the testimony in chief of this witness on printed page 94 relative to the matter just inquired into.)

"By MR. CLAUGHTON:

"Q. You will now observe from your testimony that you left it with him on the 7th, and from that paper, during your absence, he could have ascertained all about the amount of these claims that had been appropriated for at the time of the settlement. With your attention called to that testimony, are you prepared to say that this paper which you have testified you gave to him on the 7th had been submitted to him prior to that time?

"A. *I testify exactly as heretofore.*

"Q. Then you decline to answer that question?

"A. *I do not.*

"Q. Will you please answer it?

"A. *I have answered it.*

"Q. You will observe from your testimony that you left that with him on the 7th, and from that paper, during your absence, he could have ascertained all about the amount of these claims that had been appropriated for at the time of the settlement. With your attention called to that testimony, are you prepared to say that this paper which you have testified you gave him on the 7th had been submitted to him prior to that time?

"A. *I have no doubt of it.* I stated in my testimony in chief the 7th, because that was a specific date upon which I knew that I had done a given thing, for the reasons and circumstances there given, and that it remained in his possession until such another given date for the reasons and circumstances there given, and that it was in his possession on the intermediate date for the reasons there given and from the entries on the paper itself.

"Q. Have you any recollection that this paper was in his possession prior to these dates?

"A. My remembrance is that I compared that paper with him from documents 70 and 225. That was not an unusual occurrence in the matters of the firm. That I did compare this identical paper with him, I cannot swear definitely and positively, because it was so long ago, and as it was not an unusual occurrence I did not charge my mind with it and cannot tell you, but I have no doubt individually upon that subject.

"Q. If this paper was handed to him or shown to him prior to the transaction—I mean the assignment—what necessity would there have been for you to hand him the printed documents with the checks which you say were upon them when handed to him?

"A. He did not have that paper to take to his residence. I do not know whether it was in existence at the time he took the books and papers to his residence; but even had it been in existence and had it been given to him it would have been appropriate to have given him the documents, that he might have checked that paper off with the documents.

"Q. For what purpose?

"A. To see that it was correctly done.

"Q. The purpose of the documents with the checks upon it was to see which of these cases belong to Cummings & Baker?

"A. Yes, sir; and also for the purpose of showing the cases in which Cummings & Baker had less than the ordinary fee.

"Q. Do the printed documents show which of the Cummings & Baker cases had less than the ordinary fees?

"A. Not without the marks, but with the marks it does.

"Q. How do the marks affect that?

"A. It is shown by blue-pencil marks as I had it taken from the fee agreements.

"Q. You mean to say that the blue-pencil marks indicated the cases in which the fees were less than twenty-five per cent.?

"A. Yes, sir.

"Q. And that same information is in this paper?

"A. It is, by calculation. I do not know whether it is marked on the margin or otherwise. I do not remember about that now. Of course a calculation would show.

"Q. Sometimes it was marked on the paper?

"A. Yes.

"Q. Then this paper that you say that you handed to him on the 7th is really, in respect to the names and the amount of fees in each respective case, a mere copy of the books with the checks on the books?

"A. It was intended to be.

"Q. Is it?

"A. I presume it is. So far as I know, it is.

"Q. Is there anything else on it that is not on the book with these checks?

"A. Nothing except the entries as to the date of the remittance, the amount of the remittance, the number of the check, the date of the check, and the additional sheets showing the amounts due to other attorneys.

"Q. Then the public documents do not show the amount of the checks?

"A. Yes; they show that amount of the checks, unless there is some mistake in printing. Otherwise the documents would show exactly the same as the amount of the checks.

"Q. Then, if I understand you correctly, the only differ-

ence between these public documents* and this paper is that this paper is an extract from the public documents as to the Cummings & Baker matters, while the public documents have other matters besides the Cummings & Baker cases?

"A. Yes.

"Q. That is all?

"A. Yes.

"Q. How long before the first entry on this paper was made was it prepared?

"A. I could not tell you.

"Q. Can you approximate it?

"A. I always intended to have a paper similar to that prepared in readiness for the first issue of drafts. It may have been done the night before or it may have been done two or three days before. Ordinarily it was only a short time before.

"Q. To what first issue do you allude?

"A. The issue of the first draft by the Treasury Department in payment of the claims.

"Q. You think it was prepared how long before that?

"A. It might have been the day before or it might have been a week before. I do not know about that. It was ordinarily just before I expected the Treasury Department would issue some drafts in payment.

"Q. Would you not naturally prepare such a paper very soon after Congress made the appropriation?

"A. No; not necessarily.

"Q. My question was ordinarily.

"A. Ordinarily it would be done in season for the use for which it was intended and not much before.

"Q. Do you remember at what time this appropriation was made?

"A. The statutes will show. I do not remember the date.

"Q. Now I will ask you a few questions about the conduct of these negotiations. You have testified that you acted fairly and squarely with Mr. Cummings in the matter of trade. Is that what you do testify to?

"A. Yes, sir; I am willing to testify to that.

"Q. Do you think you dealt as fairly with him as you

* Cummings admits (page 149) that he had those public documents Nos. 70 and 225 before the passage of the appropriation bill (August 4, 1886), and on page 140 that with them he could have made Exhibit H. M. B. No. 3.

would have done with anybody else with whom you were making a trade?

"A. Yes, sir.

"Q. You intended to give him all of the facts from which an intelligent gentleman would be able to come to a conclusion as to whether or not the trade was to his advantage?

"A. I intended he should have that, and think he did. He was not in ignorance on the subject.

"Q. If I understand you correctly, you did not think it was incumbent upon you to give him any advice?

"A. I declined to give him advice.

"Q. You did not think it was incumbent upon you to do anything more than to place in his possession such facts as would give him the means of investigating and deciding upon his own judgment whether or not the assignment should be made?

"A. That was what he had. *He had everything, so far as I know, upon which I should have acted to have made the calculation*, which I suppose he did.

"Q. You regarded it as a matter of trade, in which it was the business of each man to look after his own interests?

"A. Unquestionably; just as in every other trade.

"Q. Do you know whether he ever received anything from the H. D. Cooke matter?

"A. I do not.

"Q. He never reported to you that he had received anything?

"A. He never did. I knew that he had funds belonging to the assigned bank, but whether he ever devoted any of them to his own uses I do not know.

"Q. In reference to this document marked 'H. M. B. No. 7,' is this one of the papers that you handed to Mr. Cummings to advise him of the condition of the business?

"A. Yes; but I think possibly these blank sheets have been put on this as a kind of a cover to this paper.

"Q. What does that paper show?

"A. This paper shows the name of the client and, in general, the period for which arrears of salary were claimed for the client. For instance, here is the first name, Harry J. Ashmore, Burlington, N. J., from August 1st, 1875, to November 30th, 1875. Burlington, N. J., represented his place of service, and the dates represented the period of the service for which the claim was made.

"Q. Does that show how much was due to him?

"A. No; this does not. His salary, ordinarily, was taken from the Treasury registers, and the difference between that salary and the legal salary, as specified in the statutes, would be the amount due.

"Q. Then, in order to make this paper of any assistance to Mr. Cummings, it would be necessary for him to search the Treasury records?

"A. No, sir; I said the Treasury registers.

"Q. That is a record, is it not?

"A. It is a public document, the same as the Blue Book.

"Q. You may change it to Treasury register and then answer the question.

"A. It was one of the links necessary to complete the computation.

"Q. Had you in your possession anything that supplied that link?

"A. I had not, unless a case had been adjudicated, as shown in documents 70 and 225.

"Q. Then all of these cases in document H. M. B. No. 7 that had been adjudicated are reported in printed documents as adjudicated cases?

"A. Yes; from time to time.

"Q. Only a portion of the names in printed documents 70 and 225 will be found in Exhibit No. 7. For the plaintiff to have been advised what was due to these various claimants he would have had to make a search somewhere else to ascertain those facts?

"A. If I had been intending to make a proper computation I should have checked off the names in documents No. 70 and No. 225 so far as contained in them; then the other cases would require a computation for the purpose of ascertaining the difference between the amount it was shown by the Treasury register they received and three dollars a day, to which they were entitled.

"Q. And in respect to those cases you had no other information than these papers and these documents give?

"A. *Those were all the records I had.*

"Q. You had no other information?

"A. *No, sir; no other information.*

"Q. Your familiarity with the cases did not give you any additional information?

"A. No, sir; they were filed in that way. When they were

passing the accounting officer I then went over the figures in the case as they were made in the departments and verified each case as it was being passed, and if the allowance was not made for the whole time, or if it was made at different rates from those that I thought it should be made for, I made an investigation in the case as it went along. In that way, with a few exceptions, the amounts found due by the accounting officers of the Treasury were accurate and correct and satisfactory to myself as attorney.

"Q. Can you look at this paper handed to him on the seventh day of September, and from your examination of that can you tell what amount has already been appropriated for and the fees belonging to Cummings & Baker in those cases?

"A. Not from paper No. 7 alone, but from paper No. 7 and documents Nos. 70 and 225 and the Treasury registers and fee agreements, a list of which was given to him, of the cases where, so far as my examination showed, the fees were less than twenty-five per cent.——

"Q. I am talking about this paper only.

"A. From these papers it could easily be done.

"Q. Please look at Exhibit H. M. B. No. 3. You have testified, I believe, that from this paper, by adding up certain columns, he could have advised himself as to exactly the amount of the claims that had already been appropriated for on the sixth day of September, 1886?

"A. I see they are added up here. They are my figures, and I presume they are right.

"Q. Are those your figures?

"A. I think they are my figures.

"Q. What do they add up?

"A. One page foots up $2,351.46; another, $6,342.16; another, $5,325.65; another, $7,570.79; another, $5,594.78; and another, $5,792.67.

"Q. What do they aggregate?

"A. $32,977.51.

"Q. Can you tell from that statement how much was due to other attorneys?

"A. These sheets show. (Sheet No. 7.)

"Q. I want you, Mr. Baker, if you can, to state it, and I want to get it in the record from your testimony.

"A. I cannot give it in any way except from this sheet—$1,488.81.

"Q. That left due, then, to Cummings & Baker how much?

"A. $31,488.70; but that does not cover any of the other expenses of the firm, which were large in a great many directions.

"Q. I am talking about the fees now.

"A. After the trade the expenses relating to these cases were paid by myself individually.

"Q. It now appears from this paper that $31,488.70 was the amount of the fees. What proportion of that had already been collected by you?

"A. When?

"Q. At the time of the trade.

"A. I do not know.

"Q. Is there any way by which you can ascertain that?

"A. The receipts would show by their dates.

"Q. What had not been collected by you were in the shape of issued drafts, ready to be delivered upon the presentation of the power of attorney, as I understand it. Is that so?

"A. That is so."

This cross-examination shows that the exhibit H. M. B. No. 3 must have been prepared as early as August 30th, 1886; that it was not prepared about the "middle of August," when Mr. Cummings took the other papers to his house; that Mr. Baker prepared it, and that he thinks he compared it with the complainant; that that exhibit was in use for several days before the sale, and that the complainant could have seen it and probably did, and that the defendant called the complainant's attention to it before the sale. The defendant repeatedly said he had no doubt he did so.

In his testimony *in rebuttal* the complainant says (page 132) that he never had in his possession prior to the 6th of September, 1886, Executive Documents Nos. 70 and 225 with check marks denoting which of the cases reported therein were Cummings & Baker cases, and that he never saw Exhibit H. M. B. No. 3 prior to the evening of September 6th, 1886.

But upon cross-examination he admits (page 149) that he had the executive documents. He testified as follows :—

"Q. At the last session you referred to your collection of executive documents No. 70–225 in evidence. Did you generally get this soon after they were printed?

"A. I did.

"Q. Did you get No. 70–225 before the deficiency bill of 1886 became a law?

"A. That I cannot say; *but I think I had it in my possession probably before the appropriation bill passed.*"

And on pages 139 and 140 he says he could have prepared schedules like H. M. B. No. 3. His testimony is as follows :—

"Q. Mr. Cummings, you have stated that Exhibit H. M. B. No. 3, in answer to a question by Mr. Claughton, was in your possession, and that you paid no attention to it and put it aside. You did not take enough interest in it to go over it and see what it was?

"A. The transaction was closed, as I supposed.

"Q. Well, you had that paper and other papers and these bank checks and bank book in your possession how long?

"A. Well, I think from about the morning of the 7th of September, 1886, to about the 1st of October, 1886.

"Q. And you put this paper away and did not pay any attention to it, did not treat it with any degree of importance, that it would carry any information on the subject at all, did you not?

"A. I did.

"Q. When did you first look at that paper?

"A. *I first looked at the paper near or probably the same day, or the next day, or at the day it was that the first letter came in containing a power of attorney to indorse the draft.*

"Q. *Then you knew what the paper was, I suppose?*

"A. *Yes, sir.*

"Q. Can you tell from your recollection what was the purpose of the paper?

"A. I can only tell now because I have seen it. I think now it was the usual paper that Mr. Baker prepared, and I would say that whenever the House of Representatives passed

the appropriation bill providing for the payment of these claims, and it became certain in our idea that the appropriation would be made, Mr. Baker would sit down and make up these schedules, and those schedules were generally made by the time the bill became a law.

"Q. *It was just such a paper that, under all the circumstances, you could have made yourself, couldn't you, if one had to be made?*

"A. *Why, certainly.*"

As he had by his own admission a list of the cases where the fees were less than twenty-five per cent. (page 44) and the Executive Documents Nos. 70 and 225 before the appropriation bill passed (which was August 4th, 1886—more than a month before the sale of September 6th, 1886) (page 149), and says (pages 139 and 140) that he certainly could have prepared a schedule like Exhibit H. M. B. No. 3, how was he deprived of any essential information even upon his own statement?

COMPENSATION FOR SERVICES IN THE INSPECTOR CASES CLAIMED BY CUMMINGS AFTER THE SALE OF SEPTEMBER 6TH, 1886.

On page 56 of the record, Mr. Cummings states the nature and amount of his services in securing the possession of sundry drafts issued in the inspector cases.

Then, page 57, follows this testimony: —

"Q. Did your service go so far in that way as for you to name any price for your services?

"A. I do not recollect, but I am inclined to think that, following out his admission that I was entitled to a compensation for the services that I had performed, and also the fact that before that one claimant, as it were, got away from him or tried to get away from him and get the draft himself, that Mr. Baker offered me $300 if I would secure that draft and not have it go to the claimant. I think I put a sort of

an estimate on the value of those services, but what it is now I cannot say.

"Q. What is your best judgment about it as to the price you named?

"A. I cannot remember, because it was a percentage, and what that was I cannot say."

The testimony was continued on pages 60 and 61, as follows:—

"Q. You found out enough in the fall of 1888, and not before, to satisfy you that you had been overreached?

"A. I did, sir.

"Q. How did you ascertain that fact?

"A. When I found that $73,000, $61,000, and $110,000 were appropriated to pay the claims of inspectors of customs, and I recognized in the Congressional estimates that the very largest part, probably nine-tenths, of all the claims were claims that we were the attorneys in.

"Q. Learning those facts through that channel, and having those facts in your possession, why did you undertake to collect the draft for Mr. Baker for a compensation?

"A. I never offered to do it for a compensation and never did do it for a compensation, and I never received any compensation.

"Q. That may be, but I understood you to say that you had made an estimate—which you cannot now state—what your services were worth in obtaining these drafts for Mr. Baker by reason of a conference with the Assistant Secretary of the Treasury.

"A. I will tell you. When Mr. Baker denied that I had done anything of any consequence in the collection of these claims I pointed to those three instances where I had helped to secure the drafts instead of having them go to the claimants, and Mr. Baker had prior to that presented a claim to me in which he claimed that I owed him $2,700, and, taking Mr. Baker, for argument sake, on his own ground, that I claimed that at a very moderate, almost infinitesimal percentage, that my services for collecting those drafts was far more than his claim against me.

"Q. Then you proposed to settle it in that way?

"A. I did not propose to settle it in that way.

"Q. Mr. Cummings, what I want to know is this: Having your feelings aroused to the fact that you had been greatly injured—that you had been cheated by a partner in a business transaction, knowing that fact, yet, without adopting some process to correct that fraud, you, nevertheless, at the instance of Mr. Baker and for his especial benefit, applied to the Assistant Secretary of the Treasury and performed certain services in obtaining those drafts for him, for which you placed an estimated fee upon it?

"A. I placed no estimated fee upon that service at the time it was done. The estimate that I placed on that service was nearly a year after that, and it arose out of a correspondence between Mr. Baker and myself. I had never any idea of charging Mr. Baker anything for my services for the first two lots—that is, the appropriation of February and of March, 1888.*

"Q. Then, with the full knowledge of the fraud practiced upon you in 1888, you waited a year longer with that information, and probably with additional information, without filing a bill to set aside the conveyance, but in the meantime set an estimated value upon your services for aiding Mr. Baker in obtaining the draft. How do you reconcile that?

"A. I never set any value upon my services in the draft matter except as it was drawn out in correspondence between us.

"Q. Then you did state a price; am I right?

"A. I set an estimate as compared to what Mr. Baker said his claim was against me, but there is no estimate set by me in any shape, form, or manner *in any way to indicate that I believed at any time that I had any interest in the cases that had been* collected since 1886—that is, in fixing a fee for obtaining the drafts."

And on pages 67 and 68 as follows:—

"Q. Mr. Cummings, referring again to the service you rendered Mr. Baker in obtaining the drafts of the Treasury Department in the inspector cases for him, do you recollect of making a claim for your services in obtaining those drafts for the sum of $3,000?

* There were only $6,920.16 of fees received *after* 1888. (See Auditor's report, page 226.)

"A. I never made any such claim, and I wish to state, in explanation of my answer, that Mr. Baker had presented a claim to me for $2,700, and I, in reply, referred to these services in obtaining the drafts, and my conclusion was that I did not owe him anything of the $2,700, because, making allowance even for obtaining these drafts, *I am entitled to more than $2,700; but I made no claim for it.*

"Q. Do you recollect the amount of the drafts that you got through for him?

"A. The favorable action that I asked for and which was granted by the Treasury Department covered drafts amounting, I should say, to about $240,000. I may be mistaken in the amount, because I don't know the amount of drafts that Mr. Baker received, but it covered whatever drafts there were in the three appropriations of 1888.

"Q. You knew at that time the amount, didn't you?

"A. I did not, and I do not know now.

"Q. What did you ask the Secretary to do, then? How did you bring the matter before him?

"A. I explained that more fully in my testimony of last Monday.

"Q. Did you inform the Secretary as to the amount of the drafts that were to go through and the number of drafts that were to be paid?

"A. I did not, because I did not know. I showed him the schedules as shown in the executive documents and told him that we controlled a large number of those cases, and I did not know how many drafts that Mr. Baker received.

"Q. But what the amount of the drafts aggregated you knew, did you not, from papers you had in your hands then?

"A. No, sir; I had nothing in my hands showing the amount of drafts in which Mr. Baker was interested. I had in my hands the documents showing the amounts of drafts covered by these appropriations, but how many Mr. Baker had I do not know.

"Q. You did not care, either, did you?

"A. I did not care.

"Q. I believe you gave the date when you applied to the Secretary in the matter of the drafts, did you?

"A. No; I did not, because I could not give it.

"Q. Can you state the year or the month when you applied to the Secretary to have those drafts delivered to Mr. Baker?

"A. I should say it was in March, in the first appropria-

tion—March, 1888. In the second appropriation it was in April, and in the third appropriation it was the latter part of October of 1888.

"Q. Mr. Cummings, do you know the fact that the drafts were delivered to Mr. Baker?

"A. I do.

* * * * * * *

"Q. Mr. Cummings, in your settlement of your personal matters with Mr. Baker, did he not offer to allow you anything for your services rendered in assisting him in getting these drafts delivered to him?

"A. Not at that time, but in correspondence afterwards, when, in speaking of what aid I had given in these cases, Mr. Baker *did acknowledge* these services, and he said that he *was ready to make ample* compensation for them, but he never named any sum.

"Q. Did he say that he thought the sum of $500 would be ample compensation for the services rendered?

"A. He might have done so; I do not know whether he did or not, but I think likely that he did."

In Exhibit H. S. C. No. 6, page 83, in a letter addressed to Mr. Baker by Mr. Cummings under date of October 2d, 1889, occurs the following:—

"*I ask you also to state what you deem a reasonable fee for my services in the power-of-attorney matter. My estimate is one per cent. on the claims, which is more than reasonable when your fee or the main fee was 25 per cent. of the face of the claims, and I estimate that you collected some $280,000 in 1886.*"

Mr. Baker, in his testimony, pages 97 and 98, states the matter of the drafts as follows:—

"Q. State, if you please, what was the practice of the Department prior to that time, as well as afterwards, as to the delivery of drafts.

"A. The practice of the Department had been from the foundation of the Government, so far as I have been able to learn, up to about 1885, to deliver the drafts made out to the order of the claimant to the claimant's attorney who

represented the case. About that time a new order was issued by the Treasury Department saying that the draft would be issued directly to the claimant. This was prior to the settlement of these cases, in August and September of 1886. As we had always managed the drafts and secured a special power of attorney to indorse each and take out our fees as per contract and remit the balance, that being vastly the easier way, we preferred so to do. The case was represented to the Treasury Department, and finally an order was issued permitting the Treasurer of the United States to withhold in his possession the drafts and to give a description of them necessary to be put into the special power of attorney to secure the indorsement and then to deliver the draft to me upon the presentation of that special power of attorney. That was done with reference to this entire batch of cases, with the exception of one or two where there was a disputed attorneyship or where the claimant had requested that the draft be sent direct to him. This was not a favor especially granted to Cummings & Baker, but was done also for other attorneys practicing before the Department. That order was obtained *before the sale*, and set a precedent for such orders in future."

And further on pages 109 and 110 as follows:—

"Q. The complainant also refers to his services in your behalf in getting from the Treasury drafts issued in payment of the so-called inspector cases. Please state the facts in regard to this, and whether or not a similar arrangement had been made prior to the sale of September 6th, 1886, and whether what he claims to have accomplished for you was done by the Secretary of the Treasury for other attorneys.

"A. The same rule applies to drafts issued prior to the sale of 1886 as subsequently, with some unimportant modifications. The precedent was established in connection with the drafts of 1886, and the same rule was applicable to many other attorneys. Subsequently the arragement was only to continue that order to drafts issued later. I asked the complainant on a few occasions to see the Assistant Secretary of the Treasury, Mr. Maynard, who had charge of these matters, for the reason that the complainant claimed to be on terms of especial acquaintance with him, through his connection with him in the D. K. E. Club, and that he

could approach him more readily than myself. Upon a later occasion I found no difficulty in having the arrangement continued without the services of the complainant.

"Q. Did the complainant succeed in having any drafts retained for you in any cases where the attorneyship was in dispute or where the claimant asked to have the draft sent to him?

"A. He did not.

"Q. State whether or not at any time you offered him for services—any case $300.

"A. I did not.

"Q. What have you to say in regard to his claim for pay for his services in this matter of the inspector cases?

"A. I was trying to get him to pay me a balance due, which is now in suit, aggregating some $2,700. He then, for the first time, suggested to me that he ought to have pay for his services in procuring the drafts for me. I said, 'Very well, if you think so I am ready to pay you any reasonable compensation. I unquestionably did as much for you in connection with the Cooke assignee matter, but I am making no charge for it.' I asked him what he thought it was worth, and I could get no definite response from him. I finally offered him $500, and asked him if that would be satisfactory. He refused it, and there the matter ended."

In the surrebuttal testimony (page 164) a letter from Mr. Cummings to Mr. Baker is submitted, in which he wrote as follows:—

"Mackey says you think any charge of one per cent. of claims exorbitant in the power of att'y matter. You say it took about 3 half hours. You are mistaken. It was a week before I could make an impression on him. You know how he put me off; how I took a big bundle of letters over to him to show the relations with our clients; how I went to Fairchild, refused but finally agreed to leave it to Maynard; how I went to Maynard's house. I made the cases my cases, as I honestly believed they were. One per cent. too much? Why? Why, I was offered ½ of a good fee to get a man's drafts for him that very year, and I tried it and Maynard refused it, when he said it was another attorney's case, and said what he had done was for personal reasons and not as a matter of

business. Three times I pleaded for you. How much did it cost you to get your fees in those cases where the drafts got away from you? Didn't it cost far more than one per cent. of the claim? Took but little time, did it? The value of services depends on the results and not on hours; ¾ of what you collected subsequent to '86 was on powers and contracts gotten prior to that time. All you did was to write a simple letter of renewal of claim, back it up with the stereotyped affidavit of which I wrote scores, and the work was done. Was your service any the less valuable when you took a $500 fee for a few minutes' work?

"In order to be sure, I have stated a hypothetical case like the present one of draft matters to some half dozen practicing attorneys before the departments, and not one set as low a fee as I did.

"You would not have done it so cheap if a stranger or client had asked you to do the job."

In Exhibit H. M. B. No. 12, being a letter from Mr. Baker to Mr. Cummings, under date of August 13th, 1889, there appears the following:—

"You say you went to Ass't Sec'y Maynard three times at my earnest solicitation and add, 'I think I earned a good fee for my services in the single matter of the drafts.' That you rendered such service I very gladly admit, as I do that in my absence you rendered some other brief services for me in those cases. If you will present a reasonable bill for such services I will very gladly allow it upon the settlement I have been trying for more than two years to get. Lest you may be apprehensive, I will say here and now that I have no charge against you for any services I may have rendered you during your absence or otherwise in connection with the Cooke estate."

And in the testimony before the auditor, page 230, Mr. Baker testified as follows:—

"Q. During that period (from September, 1886, to August, 1889), what services, if any, did Mr. Cummings render in connection with the inspector cases?

"A. He rendered services in the settlement by getting the

drafts cashed and making remittances to the clients in, *I think, thirteen cases during my absence in 1886.* He subsequently was occasionally asked, or offered when I was busy, to put some papers in typewriting which I had prepared, and he interviewed Assistant Secretary Maynard in connection with the delivery of some of the drafts in 1888.

"Q. That is a matter already covered in the testimony?

"A. Yes; his services were merely nominal and could have been compensated with a few dollars, if compensation had been proper or required. I may say in relation to the other cases which we had not covered by the assignment of 1886, that I brought more fees into the firm than Mr. Cummings, so that there was, on an even basis, no loss to him on account of the extra hours which I served on the inspector cases."

If the complainant "*was convinced*" *in 1888* that he had been overreached and cheated in the sale of 1886 (page 24), and again (page 153) "*was convinced*" *in the early part of the summer or late in the Spring of 1889* that he had been wronged or overreached, why did he submit, under date of October 2d, 1889 (pages 83, 164), in writing, a charge for his services in 1888, of one per cent. on the claims? It is evident that even then, a month after the Statute of Limitations had run, that he did not intend to bring the present suit.

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Satisfied as to fees of 1886. Pages 14, 22, 23, 24, 25, 26, 27, *34*, 55, 62, 63, 133, 141, 143, 154.

Papers and documents as to inspector cases received by him. Pages 3, 11, 13, 14, 15, 21, 22, 23, 24, 40, 41, 44, 45, 46, 47, 93, 103, 111, 118, 119, 126, 154, 197.

Contradictory testimony of. Pages (1, 19, 69, 80) (46 and 59) (46 and 47) (23–132–140) (pages 30–43) (31, 164) (29, 43) (27–144–152) (29–43–131–135–139–149) (*24*, 26, 54, 55, *153*) (22, 23, and 160 his witness) (2, 27, 65, 69, 79) (1–29–30–66, 135–150) (23–26–55–132–133–140–141) (1–29–30–43–138) (20–56–57–58).

His statements as to when he knew he had been deceived, cheated, or defrauded. Pages 5, 23, 24, 25, 26, 27, 34, 54, 55, 60, 61, 62, 63, 132, 133, 141, 142, 143, 152, 153, 154.

Ratified the sale of September 6th, 1886, three times after he admits he had Exhibit H. M. B. No. 3 in his personal possession. Pages 14, 15, 22, 23, 59, 60, 95, 174.

COMPROMISE, Suggestions of. Pages 26, 61, 62, 110, 145, 200, 227.

COOKE, H. D., & Co., Assignment of. Pages 9, 10, 31, 32, 66, 76, 93, 98, 99, 105, 125, 134, 197, 199, 224, 248, 249, 251, 252, 253, 254, 258, 265, 267, 268, 269.

Assigneeship fees part of compensation for inspector cases. Pages 12, 32, 98, 99, 100, 134, 197, 201, 224, 225, 229, 248, 249, 250, 253, 254, 261, 268, 269.

DISSOLUTION OF PARTNERSHIP (see Baker, his intention to close).

EXECUTIVE DOCUMENTS, Nos. 70 and 225. Pages 11, 13, 14, 22, 27, 45, 47, 94, 100, 118, 120, 123, 124, 126, 127, 132, 149.

EXHIBITS not printed, 204–5–6.

FEES in inspector cases prior to sale. Pages 2, 12, 20, 100. In 1886 (see Exhibit H. M. B. No. 3, page 174).

Suspended in 1886. Pages 11, 12, 44, 59, 93, 96, 97, 179, 233, 234, 235, 263.

After 1886. See Auditor's account and Exhibit H. M. B. No. 1. Pages 259, 226.

One-third of to Cummings the basis of the sale. Pages 10, 12, *21*, *22*, 59, 81, 93, *98*, 100, 132, 197, 223, 229.

Other than twenty-five per cent., and in cases outstanding. Pages 11, 44, 59, 93, 96, 97, 233, 235, 181, 182, 264.

FRENCH AND AMERICAN CLAIMS COMMISSION. Pages 88, 154.

HELLEN, MR., Transactions with. Pages 35, 36, 66, 107.

HEUSTIS CASE, The. Pages 33, 34, 65, 105.

INSPECTOR CASES, Nature of. Pages 2, 19, 20, 91, 103.

Sold to Baker September 6th, 1886. Pages 4, 12, 22, 60, 83, 98, 121, 213, 214.

Pending. Pages 11, 21, 44, 45, *46*, 59, 93.

How prosecuted. Pages 2, 19, 20, 21, 91.

Amount of paid before sale. Pages 2, 12, 100.

Allowed and paid in 1886. Pages 4, 14, 15, 22, 23, 24, 25, 127, 174, 226, 259.

Allowed and paid after 1886. Pages 24, 25, 26, 34, 226, 235, 259.

Total amount paid. Pages 226, 259.

Suspended at time of sale. Pages 11, 44, 59, 93, 96, 97, *179*, 232, 233, 234, 235, *263*.

Secured after sale value of. Pages 11, 44, 59, *182*, 233, 235, *264*.

Sale of under consideration a long time. Pages 3, 11, 20, 21, 40, 80, 81.

LIGHT HOUSE DISBURSEMENT CASES. Page 90.

LITTLE ROCK OR BEEBE CASE. Pages 30, 43, 89, 113, 114, 115, 131, 137, 138.

LIMITATION, Statute of. Pages 5, 17, 23, *24*, 25, *26*, 27, 34, 54, *55*, 60, 61, 62, 63, 101, 104, 133, 141, *142*, *143*, 144, 146, 153, 154, 214, 215, 216, 217.

TREASURY DRAFTS. Pages 56, 57, 59, 61, 67, 68, 83, 84, 98, 104, 109, 110.

"THOUGHTS IN MIND"—Exhibit H. M. B. No. 2. Pages 7, 9, 15, 23, 25, 48, 49, 50, 51, 52, 53, 54, 69, 70, *79*, 101, 102, *109*, 112, 140, *141*, 195, 198.

The necessarily limited time allowed for discussion does not admit of an oral reference to more than a very small part of the testimony, which, so far as is material, is in the papers and documents and in the examinations of Cummings and Baker.

The character and honor of Mr. Baker have been by this suit assailed for the first time; and, so, we are justified in asking—as we are sure we shall receive—the careful consideration of this court of the history of the case and the testimony that bears upon it, notwithstanding that the learned court below reached the conclusion that Cummings was entitled to treat the partnership as continuing to exist in respect of the inspector cases.

We submit that the decree should be reversed, and the case remitted with directions to dismiss the bill, with costs.

GEORGE F. EDMUNDS,
S. R. BOND,
Of Counsel for Appellant.

No. 189.

Brief of Mackey for Appellee

Filed Jan. 8, 1898.

JAN 8 189
JAMES H. McKENNE
CL

Supreme Court of the United States.

OCTOBER TERM, 1897.

HENRY M. BAKER, *Appellant,*

vs.

HORACE S. CUMMINGS, *Appellee.*

No. 189.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

FRANKLIN H. MACKEY,
Solicitor.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

HENRY M. BAKER, *Appellant*,

vs.

HORACE S. CUMMINGS, *Appellee*.

No. 189.

BRIEF AND ARGUMENT FOR APPELLEE.

This is an appeal from a decree of the Court of Appeals of the District of Columbia affirming a decree of the Supreme Court of that District, which declared void an alleged assignment by the appellee to the appellant of his interest in a certain part of their partnership business. The court also having directed an accounting, it was found that the sum of $32,772.14 with interest from July 1st, 1895, was due the appellee. The Auditor's report being affirmed (Record, 269) an appeal was taken to the Court of Appeals and was again affirmed by that court. So that the case has been four times before the lower courts and each time the first judgment of the court has been affirmed. The cause is now here on final appeal.

The bill alleges, and the evidence shows, that on the 6th of September, 1886, the appellee, who was an equal partner of the appellant in the practice of law before the government depart-

ments in Washington, signed and delivered a paper purporting to assign to the appellant, in consideration of the sum of $15,000, all of appellant's interest in a certain class of cases then being prosecuted by them before the Treasury department for the recovery of monies due to a class of government officials known as inspectors of customs. The cases arose under a ruling of the Court of Claims (Adams *vs.* U. S., 20 Ct. of Cl., 115), and were called in the testimony "inspector cases." The assignment was made upon the representation of appellant, who admits he had special charge and knowledge of these cases, that the amount of fees earned and prospective in them and accruing to the firm, was about $40,000. Appellee having no knowledge of the matter relied upon the truth of this statement and accepted appellant's offer of $15,000, as his share of the fees, being content to allow a deduction of $5,000 from his share, in other words, to take $15,000 at once instead of the $20,000 later on, which latter amount he was led to believe was all that he would have been entitled to receive under the terms of the partnership. The partnership, however, in the remaining business of the firm continued and was not dissolved until September, 1890.

About two years after the assignment the appellee began to suspect, by reason of facts which had come to his knowledge, that he had been overreached, and that the defendant had misrepresented to him the actual value of his fees in the inspector cases. He thereupon privately prosecuted a thorough investigation in the Treasury department as to the amount of inspector cases on hand at the time of the assignment. He was appalled by the discovery that instead of the fees of the firm amounting to only $40,000 as stated by appellant, they actually amounted to about $100,000, of which, at the very time of the assignment, he now for the first time learned, the appellant had collected about $26.000 in cash and had besides about $25,000 in drafts lying in the Treasury department, awaiting his call, in which latter the firm's fees amounted to about $6,000. The

appellee's share of all this, but for the assignment, would have been about $50,000, and appellant's a like sum. By reason, however, of appellant's misrepresentations and concealment he had received only $15,000 while the appellant received over $85,000. Appellee immediately disclosed his discovery to the appellant and thereupon soon after, (September, 1889,) dissolved the partnership. Some time was consumed in an endeavor to compromise, but, failing to reach a settlement, appellee filed this bill on the 1st of February, 1890, for an accounting, claiming the assignment to be invalid.

That it was invalid upon two grounds there can be no room for doubt, and it was so held by the court below; *first*, void as *nudum pactum*, having no consideration to support it, and, *secondly*, voidable because of misrepresentation and concealment, to say nothing of the gross inadequacy of the consideration, even if it could be treated as a consideration.

First, it was void for want of a consideration, because at the *very time of the assignment* appellant had of the firm's money over $32,000 in cash and drafts, one-half of which, or about $16,000, belonged to appellee as his share. Appellant instead of informing appellee of this, concealed the fact and paid him out of *this very money* the $15,000, as the consideration of the assignment. It is plain that this $15,000 was really appellee's *own money*, money which he was entitled, then and there, to receive of appellant even had the assignment not been made. This being so appellant *paid nothing* to appellee as a consideration for his interest in the inspector cases. He simply paid that which appellee had a right to demand and which appellant was bound to pay ; indeed he did not pay, by nearly a thousand dollars, what apppellee was entitled to. In other words, as the appellee was paid *with his own money* and not the money of appellant, he received *nothing* from him as a consideration for the assignment. It was consequently void, and had no effect whatever to change the partnership relations, and the

rights of appellee in these "inspector cases." The business of the partnership continued in contemplation of law exactly as if the so-called assignment had not been made. Consequently the doctrine of laches so strenuously insisted upon by appellant has no application whatever. The bill is for an accounting and was filed within a few months after the dissolution, and in that accounting the alleged assignment never in point of law having been made (because there was no consideration to support it) is to be as entirely disregarded as if it had never existed. This was the view taken by the court below, where Chief Justice Alvey in delivering the opinion of the court said:

"It is very clearly shown that the $15,000 paid over to Cummings by Baker on the assignment of the former's interest in the inspector cases, was not in truth the money of Baker, but was the money of the partnership of Cummings and Baker deposited in the name of Baker; and that in receiving the $15,000 for his share or interest in the inspector cases Cummings was in reality, and to all intents and purposes, receiving his own money, and not even the full amount due him, for and on account of the inspector cases previously earned, and actually realized or secured. This being so, the assignment of September 6th, 1886, was not only voidable for misrepresentation and failure to make full and frank disclosures of the real state of the business, and the extent of the interest of Cummings therein, as held by the court below, but *it was void from the commencement* and transferred no interest to Baker, because of the entire want of consideration—the $15,000 being received by Cummings in ignorance of his rights. If this view of the transaction be correct, and we perceive no reason to doubt it (Helmore *vs.* Smith, 35 Chan. Div., 436; Brooks *vs.* Martin, 2 Wall., 85), neither the statute of limitations, nor the doctrine of the lapse of time, as defences to the relief sought, would have any application. *The assignment did not break up or terminate the relation of partners; but the partnership continued, not only with reference to the other business of the firm but also with reference to the inspector cases; the assignment to Baker being without legal effect or operation*, and that being so, and the partnership continuing until September, 1889, when it was dissolved, less than five months intervened from the time of dissolution to the time of filing the bill on the 1st of February, 1890."

The money (this $32,000) was deposited by Baker in Corson & McCartney's bank of Washington. It was deposited in his own name, but it is in evidence that it was solely made up of the proceeds from the collected drafts, and the account was, as a matter of convenience, purposely kept in Baker's name. It was none the less, however, the partnership account, and was as much so as if the account had been kept in the firm name. It is admitted that the check by which Cummings was paid was drawn against this partnership fund. And it is not denied that of this money Cummings was, at the time of this assignment, entitled to more than $15,000, the price paid him. What is the law as to this?

The case of Helmore *vs.* Smith above cited is very much in point. In that case during the temporary unsoundness of mind of Helmore, who was a partner of the defendant, the sheriff levied execution against his "chattel interest" in the partnership to satisfy a judgment against Helmore. The defendant purchased it and paid for it by a check drawn on the partnership bank account [just as Baker gave his check against the partnership funds]. At that time there was more owing to the plaintiff from the partnership than was paid by the defendant for his interest. The plaintiff, on recovering his health, brought an action to set aside the sale. Bacon, V. C., said:

"Now, I feel surprised when I am seriously told that a partner can buy out his partner's interest, whether under execution *or otherwise*, with that partner's *own money* for his, the purchasing partner's own benefit. * * * Whose money was it? He cannot say it is his own; one partner cannot say, "Money belonging to the partnership belongs to me." Here the defendant could not even say "*half of the partnership money is mine," because there had been no division; but out of the common stock, which can only by law be dealt with for partnership purposes, the defendant buys the chattel interest put up for sale.*"

The sale being set aside the defendant appealed.

Cotton, L. J., said:

"To my mind the case is to be decided against the defendant, because he did not buy these goods with his own money."

And Lindley, L. J., that master of partnership law, said:

"What makes this particular case easy is this: When the sheriff sold under the *fi. fa.*, he sold to the continuing partner, who did not pay the purchase money to the sheriff out of his own money, but paid for what he purchased out of the assets of the partnership."

And Lopes, L. J., said:

"If the defendant in this case had bought from the sheriff what he did buy with his own money, very difficult questions would have arisen."

So, in regard to Cummings being entitled to receive from Baker his share of the fees already collected by Baker, the case of Brooks *vs.* Martin, 2 Wallace, 70, is exactly in point. This was a case where this court set aside an assignment of fees by one partner to another as in the case at bar, Mr. Justice Miller delivering the opinion of the court said.

"In regard to the adequacy of price, it is obvious that Brooks did not pay Martin anything that he was not bound to pay before the sale was made, or assume any obligation under which he did not already rest. Nor did Martin receive anything which Brooks did not then owe him, or his promise to do anything for which Brooks was not previously bound."

If these propositions of law be correct, it will be obviously needless for this court to examine to any extent the testimony as to the misrepresentations of appellant, because it is admitted by him that he did not tell appellee the status of these cases. He expressly puts himself upon the ground that he was under no obligation to disclose these facts because, as he puts it in his testimony, "it was a trade, just as any other trade" and he

says if appellee did not know as much about the cases and their status as he did, it was because he did not take the trouble to find out. Of course, as we shall hereafter see, this is no defense between partners, but taking him at his word, the fact is admitted by him (in his own accounts, presented to to the auditor) that he had this $32,000 of the firm's money at the time he paid appellee the $15,000. When therefore this court shall have found this to be the case it must necessarily hold as the court below did that the assignment was *ab initio* void for want of a consideration, and consequently affirm the decree below.

The Facts in Detail as Disclosed by the Record.

We have made the foregoing statement *in limine*, because it presents the case upon which we respectfully insist this appeal must be decided. We insist that it is not necessary for this court to examine the record to determine whether fraud, viz, misrepresentation and concealment, has been committed by appellant. It is not necessary, *first*, because if the contract is void for want of a consideration it is entirely immaterial whether fraud was committed or not; and *secondly*, if for any reason the court should be of opinion that the assignment did have a consideration to support it, then we say it is voidable for the misrepresentation and concealment, which the two courts below have declared, after a thorough examination of the testimony, is abundantly established, and this court, therefore, will not, in accordance with its well established practice, reverse that finding of facts even though, as an original question, it should have some doubts.

In Dravo *vs.* Fabel, 132 U. S., 487, it was held that a decision of a District Court on a question of fact, affirmed by the Circuit Court, will not be disturbed by this court unless the error is

clear. And Mr. Justice Harlan, delivering the opinion of the court in that case, said for the court:

"The case comes within the ruling in Lammers *vs.* Nissen (Sup. Ct. Rep., Lawyer's Ed., Book 25, p. 562), where the finding of the court of original jurisdiction, upon a mere question of fact was affirmed by the Supreme Court of the State. Chief Justice Waite said: 'Under the circumstances we ought not to disturb the judgment of the State Court unless the error is clear. No less stringent rule should be applied in cases of this kind than that which formerly governed in admiralty appeals when two courts had found in the same way on a question of fact.'"

What was the rule which "formerly governed in admiralty appeals and which this court now says should be applied to equity causes coming here on appeal when *two* courts have already decided the facts against the appellant?"

Prior to that act of 1875 this court would not in admiralty case reverse on a finding of fact by the court below unless the error was perfectly clear, in case of mere doubt it would affirm.

The Richmond, 103 U. S., 540.
The Junsata, 93 U. S., 337.
The Quickstep, 9 Wall., 665.

Questions of fact only are presented by this appeal. There is no dispute as to the law. *Two courts* have already found against the appellants. It has been over and over again ruled by this court that under such circumstances the burden is on the appellant to show error. Every presumption is in favor of the decrees below. We ought not to reverse unless the error is clear.

The S. B. Wheeler, 20 Wall., p. 386.

Under the act of 1875 in regard to admiralty causes, the facts found by the court below are conclusive; and the only rulings reviewable are such as might be presented by a bill of exceptions prepared as in actions at law. The findings have practically the same effect as the special verdict of a jury.

Alexander *vs.* Machan, 147 U. S., 72.

This then is the law and practice of this court as declared in Lammers *vs.* Nissen, and Dravo *vs.* Fabel; in the first case through Chief Justice Waite, and in the second through Mr. Justice Harlan, viz :

That where two courts of equity have already decided the facts in the case, the first court as an original question and the second court on appeal, the Supreme Court of the United States will not reverse that finding except in the case of most manifest error. It will regard it as analagous to the finding of a jury.

But assuming, as we are bound to do, that the charge of fraud will be denied and the question argued by the learned counsel for the appellant we deem it our duty to present more fully than we otherwise would the facts upon which we rely to establish the charge that this assignment was procured through gross concealment and misrepresentation of fact—the *suppressio veri* and the *suggestio falsi.* In presenting these facts we shall ask the court to take nothing for granted, but shall rely for every statement in regard to the essential proof upon the very language and page of the record.

The Evidence.

The firm of Cummings & Baker was established about the year 1874. From that date until the 6th of September, 1886, the firm had prosecuted with success a large amount of claims against the Government. A great deal of the business consisted in what has been termed in the testimony "Inspector Cases;" that is to say, claims against the Government by inspectors of customs for arrearages of pay growing out of the difference between what the Treasury Department, under its construction of the law, allowed them, and what they were actually entitled to receive under a proper construction of that law. In the division of the business of the office the prosecution of these cases fell to Mr. Baker, because they arose out of the revenue laws, for, as Baker says (Rec., 116), "He,

Cummings, generally took charge of what was known as the old war claims, and I had everything arising out of the revenue laws." Cummings' knowledge of these inspector cases was therefore limited. Baker himself says:

"He [Cummings] undoubtedly understood the general character of the cases. He understood how to calculate in a general way the amount due any individual claimant, and generally, in a rough kind of way, their theory and import; but he took no part in their discussion or in preparing any briefs or argument connected with them, and did very little of the clerical work connected with them." (Rec., 92.)

And Cummings also says the same thing:

"In 1886, Mr. Baker, who had exclusive and entire charge of these cases; who kept all the records pertaining to them in his own desk under lock and key, and about which I knew nothing beyond the simple or general principle on which they were based, wanted to buy me out of these claims." (Rec., 20.)

Again Baker says (Rec., 128) in response to his counsel's examination:

Q. Will you please state whether or not, as matter of fact the general management of these claims was committed to you?

A. I do not know that anything was committed to anybody in the firm. As a matter of fact I did generally manage these cases.

Q. You had a more intimate knowledge in respect of them, because you did generally manage them, I suppose?

A. Because I did the large proportion of the work.

So that we may take it as conceded that Baker knew all about these cases, their character, amount, prospects, &c., and that Cummings knew very little about them. Indeed, Baker is not at all backward in boasting that in respect of these cases he had mastered the entire field of law and fact. Not only this, but he knew their exact status in the departments, for to him fell the duty of prosecuting them.

The business of the firm thus went along—Cummings prosecuting the "war claims" and Baker the cases coming under the revenue laws, until in 1886, when the defendant's cupidity got the better of him. He had been prosecuting these inspector cases now for a number of years and he had acquired an extensive knowledge of all the "ins and outs" of the business. Large fees had been divided between him and his partner on account of them, but still greater fees remained to be collected in the next two or three years. A large appropriation had been made in that year to pay these claims, and the money was being collected by him. Still larger appropriations he knew had yet to be made. He knew, as we shall demonstrate, almost exactly the amount of money which was to be derived from the cases which he had then on file or ready for filing. He knew that the *law* of these cases had been settled finally by the decision of the Court of Claims in Adams *vs.* The United States and Bradford *vs.* The United States, 20 Court of Claims, 115, cases which had been prepared and argued by him before that court. He knew that the prosecution of these cases had now reached a point when the work to be done consisted of but little more than the filing of a letter in each case and receipting for the amount payable. And knowing all this he began to regret being compelled, under the terms of the partnership, to divide with his partner the fees now rapidly coming in and which were yet to come in the future. It is not difficult to conceive Baker working himself into "a frame of mind" on this subject. In his testimony, as a seeming excuse for his action, he endeavors to belittle the services of his senior partner; that issue is, of course, immaterial, but it is curious to observe how, in his efforts in that direction, Baker unconsciously exposes his true motive; having done, as it was no more than his duty to do, the work in these cases he wanted to pocket *all* the fees. To use his own language (Rec,, 93): "I was tired of doing all the work and dividing the money with him." And so he began to importune Commings to sell

him his interest in these cases. The evidence on this subject shows that he goes even further than the plaintiff in describing the persistency with which he pressed upon his partner the proposition to buy him out. He says, both in his answer to the bill and in his testimony, that he placed before Commings the *alternative* of selling out to him or dissolving the partnership. Thus, in his testimony (Rec. 117) he says, in response to questions of counsel: "I mentioned it (a dissolution) in 1885, I am confident. I could not say whether I did in 1884 or not."

Q. Did you in 1886?
A. I did.
Q. Were you insisting upon it at the time that this assignment of the inspector cases was made to you?
A. I was.
Q. Was your insistance as urgent or less urgent than it had been before?
A. It was more so. My point was that I wanted the firm to end.

Again, at the bottom of page 106 of the record, he speaks of his insistance upon a dissolution and says that in 1886 "I again suggested it and *yielded only upon receiving charge of the business*," viz., on Cummings consenting to sell out.

Let it be remembered that we are now making our case from the defendant's testimony alone. Cummings, he says, opposed a dissolution and offered a compromise. "At this stage of the matter the defendant offered to buy all the complainant's right, title and interest in and to the fees in the said 'Inspector Cases,' and offered to pay complainant $14,000 in cash therefor." (Answer, near end of Par. 5, Record, page 10.) Cummings thereupon agreed to take $15,000 and Baker says "upon those terms [selling out for $15,000] the defendant *consented* that the partnership relations, as thus modified, might for the present continue." In other words it was, "You must either sell out to me your interest in these cases or dissolve this partnership."

The law upon this subject is well settled.

"The utmost good faith is due from every member of a partnership towards every other member * * * and most especially is good faith required to be observed *when one partner is endeavoring to get rid of another or to buy him out.*' (Lindley Part. Ewell's ed., bot. page 773.)

It is not worth while to quote from the testimony further than we have done to show, that at the time of the assignment of his interest in the "inspector cases," Mr. Cummings was compelled to rely upon his partner for *all* information in respect to the amount of business present and prospective, and that that partner knew *all* about the business and was, so far as these cases were concerned, the "managing" partner. There is, and can be no difference of opinion as to the law governing partners who are negotiating between themselves for a sale of one partner's interest to the other—*In societatis contractibus fides exhuberet*—is the inflexible rule, and not only *fides*, but *uberrima fides.*

"The same rules and tests are applied to the conduct of partners as are ordinarily applicable to that of trustees; and the duties, functions, rights and obligations of partners may be for the most part comprehended by the same words which define those of trustees and agents." Collyer on Part., § 182; 1 Story Eq. Jur., §§ 468-623; Kelly *vs.* Greenleaf, 3 Story, Rep. 93; Pomeroy *vs.* Benton, 57 Mo., 543, and see especially *Lindley on Partnership*, Ewell's Ed., bottom page 771, Vol. 2.

"The defendant being the partner whose duty it was to keep the accounts of the concern could not, in fairness, deal with the plaintiff for his share of the profits of the concern, without putting him into possession of all the information which he himself had with respect to the state of the accounts between them. The defendant knew from the accounts in his possession that the £1,000 was not an adequate consideration for the plaintiff's share of profits; and he cannot be permitted in a court of equity to maintain advantage which he has gained over the plaintiff's igrorance." Maddeford *vs.* Austwick, 1 Simons (Eng. Cas. in Ch.) 89; opinion by Sir John Leach, Vice Chancellor.

"One who seeks to benefit himself at the expense of his partner must have his conduct tried *by the highest standard of honor.*" Lindley, 771.

"The relations of trust and confidence existing between the plaintiff and himself placed him under an equitable obligation to *communicate* all he knew of the matter then pending to the plaintiff, to 'make a clean breast of it,' to disclose to him all the material facts within his knowledge touching the negotiations then in progress, as fully as though he had stepped upon the witness stand, and nothing short of a complete disclosure of this sort could exonerate the defendant from the charge of undue concealment." Pomeroy *vs.* Benton, 57 Mo., 548; 1 Story Eq., §204 et seq.

Was Baker's conception of the partnership relation in harmony with the foregoing authorities? Did he conceive for one moment that in dealing with his partner for the purchase of his interest, it was his duty to be as open and as frank and as fair as man can be to man? Did he know that *caveat emptor* had no application to a sale between partners? Not at all. On the contrary, he frankly tells us he *acted* on the theory that a purchase by a partner of his co-partner's interest is in no way different from any purchase which a stranger might make from a shop-keeper. Thus he says, on page 94 of the record (middle of page) that when Cummings asked him for advice he replied: "I have no advice to give in this matter. *This is a* trade."

And, again (Rec., 97):

"He asked my advice in regard to it and I distinctly declined to advise him. I said: '*We are trading.*'"

And on page 125 of record, near the bottom:

Q. You regarded it as a matter of trade, in which it was the business of each man *to look after his own interest?*

A. Unquestionably, *just as in every other trade.*"

In the course of this brief, as we shall quote from the evidence, we ask that it be read in the light of this fatal admission of the defendant. It shows the utter misconception by Mr.

Baker of the obligations which grew out of his relation to the plaintiff, and it is impossible to take his testimony and wash out of it the coloring which this admission gives to it. Can a man, upon the point of purchasing an interest in a business and desiring, as all men naturally desire and naturally endeavor, to buy it as cheaply as possible, justify a purchase from his co-partner, whom he admits did not, and could not, know as much about the value of that interest as he did, at the grossly inadequate price he paid for it, when he tells us, "In making that purchase I unquestionably regarded it just as I would every other trade, in which it is the business of each man to look after his own interest?" Is it possible to conceive that a man adopting such a course of action in purchasing his co-partner's interest, of the value of which that partner was ignorant, would hold himself steadily to that high standard of honor, which not only forbids the sightest dissimulation, but commands frankness and fairness in making a full and clear statement to the seller of all the necessary facts from which he may form a sound judgment of the value of the thing he is about to sell? Surely, if Baker's human nature is the same as that of other men, he did not, with the conception he tells us he had his obligations to his partner, on making this purchase, keep to the line marked out by the law for such a transaction. The very inadequacy of the price, if there were nothing else in the way of evidence, shows that he did not.

Repeatedly throughout his testimony, as well as in his answer, Baker tells us (Rec. 103) that when Cummings asked him for advice as to this "*trade*" he declined to advise him.

Q. Did you ever say to him that the trade would be a good one for him or for his benefit?
A. I did not. I did not give him any advice on the subject.

But the fact is *he did advise him*, for when, according to his own statement, after he had offered $14,000 to Cummings for his interest in the inspector cases, and had insisted that he

must sell or dissolve the partnership, Cummings said to him: "Well, Baker, if you *insist* upon something being done and if you think it best for me I will take $15,000," he replied "I think that is *more* than I ought to pay, but you must decide whether it is best for you or not. This is a trade." (Rec. 94, middle of page.)

Again on page 97, near bottom:

"The next morning he (Cummings) came to the office and said he had been thinking it over and if I was a mind to give him $15,000 he would trade. I said that was *more* than I could afford to pay, but to end the matter and have an end of the whole thing I would give it to him."

Here again we have in Baker's admission that Cummings sought advice of him a strong corroboration of Cummings' testimony that he had the utmost confidence in Baker's fairness, for certainly no man, unless he believes in the fairness of the purchaser, will actually propose to follow *his* advice in the consummation of the bargain. If he thought him dishonest, doubted his fairness, believed him to be a trickster, would he not act rather upon his own judgment or seek the advice of others? The extent of Cummings' confidence in his co-partner is shown by the testimony (Rec. 28, top of page).

"I will say that I had every confidence in Mr. Baker up to that time that I ever had in any man living. As I have often said that if I was going to leave the country and be gone for four years, I would not hesitate to take all my property and securities and put it down on Mr. Baker's desk and say, 'Mr. Baker, I am going to be gone for some time,' and when I came back again I have no doubt that I would have an entire and true accounting for the whole thing."

Now, with his admission of Cummings' confidence in his sense of fair dealing, he tells us that he told him "fifteen thousand dollars is more than I *ought* to pay you," "more than I can *afford* to pay you."

When one partner, having full knowledge of the value of his co-partner's interest, proposes to the latter, who is without such knowledge, to purchase his interest in the business of the firm and tells him that $15,000 is *more* than ought to be paid for it, "more than he can *afford* to pay for it," are not such statements equivalent to saying "$15,000 is more than it is *worth*," and yet Baker knew at the very time he was making these statements that he was making a serious misrepresentation of fact. It was more than a *supressio veri*, it was the *suggestio falsi*, for he knew that he had at that time in his pocket nearly $16,000 in fees belonging to Cummings and over $70,000 more of fees absolutely certain of collection, one-half of which would belong to Cummings. It was not a frank, fair, truthful representation, and, unless he can convince the court that it was, he cannot maintain this assignment, for a court of equity will protect the confidence which should exist between partners dealing with each other and will insist that they *shall* be frank, fair and truthful in their representations. Baker *knew* when he told Cummings that $15,000 was more than he ought to pay that he was *misleading* Cummings as to the true value of his interest. Nay, he knew that he was buying out Cummings with his (Cummings own money and not giving him all of it either. For the actual transaction as disclosed by the drafts in evidence was this. At the time of the assignment drafts had already been issued on account of these inspectors cases in a sum large enough to pay the firm $31,488.70 in net fees, and over $26,000 of these fees had been turned into cash by Baker and placed in the bank to the credit of an account standing in his name, but which was really the firm account. The rest was in drafts ready for delivery. Cummings' share of these fees, due him at that very moment, was $15,744 35. In addition to this the aggregate amount of fees in cases then on file, or ready for filing, was $71,743.51. Had Cummings refused to sell out to Baker, his share of these fees would have been over $51,000. So that Cummings

actually made a present to Baker of over $36,000 for the privilege of getting $15,000 of his own money, a sum less by $744.35 than was at that very moment due him had he demanded of Baker a division of the fees collected up to that time. And yet we are asked to call such a transaction so fair that it can be tested by "the highest standard of honor."

Where no such confidential relations exist between vendor and vendee as exist between partners when one is attempting to "buy out" the interest of the other in the partnership, a party to a sale (the ordinary commercial bargain) is not required to disclose all facts which he may have in his possession not known to the other party, and which might operate to change the latter's course of action, yet his conduct in this respect must be of a purely negative character, he is not compelled to disclose the facts, but if he do any *act* or say *but a single word* calculated to *mislead* the other party as to the true state of facts, the later is entitled to have the contract rescinded in a court of equity. Thus, in Livingston *vs.* Peru Iron Co., 2 Paige, 390, Chancellor Walworth, in dealing with a case of this sort, said:

"It has been questioned by many whether the suppression of a material fact by the one party, of which fact he knew the other to be ignorant, was not of itself sufficient to avoid the contract on the ground of fraud. * * * Although our courts have not gone that length, yet even in this state *very slight circumstances*, in addition to the intentional concealment of a fact, have been considered sufficient to constitute a fraud upon the other party. * * * And in a recent case before Lord Eldon (Turner *vs.* Harvey, Jacobs, R. 178) he adverts to the general principles that parties dealing for an estate have a right to put each other at arm's length; and that if the purchaser knows there is a mine upon the estate, and the vendor makes no inquiry, the former is not bound to give him information thereof. But, he says, '*very little* is sufficient to affect the application of that principle. If a word, if *a single word* be dropped which tends to mislead the vendor, that principle will not be allowed to operate.'"

Therefore, in that case he held that the plaintiff (Livingston) was entitled to rescind the sale, because the defendant (Palmer) having discovered a valuable mine on the lands of Livingston, which were then wild and uncultivated and remote from the residence of the latter, represented the land as being only fit for a sheep pasture and stated that he desired to purchase it for that purpose, although he really desired it because of the valuable mine which he had discovered upon it. "By this deception." said Chancellor Walworth, "the vendor is thrown completely off his guard, and he contracts to sell the land at the usual rate or price of rough broken land in that region, instead of directing his agent near the premises to inquire and ascertain its true value."

So in the case of Hill *vs.* Gray, 1 Starkie, Rep. 352, which was an action of assumpsit to recover the price of a picture. The defendant at the time of purchase had pressed the plaintiff's agent, one Butt, to inform him whose picture it was, which the latter refused to do. Butt was at that time employed in selling a number of pictures for Sir Felix Agar, and the defendant, misled by that circumstance, erroneously supposed that the picture in question was also the property of Sir Felix. Butt knew that the defendant labored under this delusion, and without attempting to remove it, permitted him to purchase the picture under this misapprehension. Plaintiff offered to prove that the picture was really a valuable one and had been painted by the artist Claude. But Lord Ellenborough said: "Although it was the finest picture that Claude ever painted it must not be sold under a deception. The agent ought to have cautiously adhered to his original stipulation, that he should not communicate the name of the proprietor, and not to have let in a suspicion on the part of the purchaser which he knew enhanced the price. He saw the defendant had fallen into a delusion in supposing the picture to be Sir Felix Agar's and yet he did not remove it;" Here not a word was spoken, but the mere *act* of the defendant's agent in placing the picture among other

pictures of Sir Felix Agar's, *tended* to create the impression that it also was Sir Felix Agar's. Therefore when the seller saw that his own act was creating a delusion it was his duty to remove it.

So in the case of Laidlaw *vs.* Orgon, 2 Wheat., 178, one of the parties was about to purchase from the other at New Orleans a large quantity of tobacco. The vendee had just received news of the signing of the treaty of Ghent, which declared peace between the United States and Great Britain, Knowing that this fact would cause a great rise in the price of tobacco, he called upon the vendor at early sunrise of that morning, before the latter could learn of the treaty, and began to negotiate for the purchase of the tobacco. Before the sale was consummated, however, the vendee asked the vendor if there was any news calculated to enhance the price of tobacco. No answer was given to this question and the purchase was effected. Upon these facts Chief Justice Marshall said: "The question in this case is whether the intelligence of extrinsic circumstances, which might influence the price of the commodity and which was exclusively within the knowledge of the vendee, ought to have been communicated by him to the vendor. The court is of opinion that he was not bound to communicate it. It would be difficult to circumscribe the contrary doctrine within proper limits, where the means of intelligence are equally accessible to both parties. But at the same time each party must take care *not to say or do anything tending to impose upon the other.*" It was therefore held that the question whether such imposition was practiced should have been submitted to the jury.

Thus we see that even where the parties are dealing at arms' length, while it is permitted to the knowing party to remain silent, yet, if he utter *so much as a single word* or do any *act*, however slight, calculated to mislead the other who is ignorant of the material facts, the latter is entitled to have the contract rescinded, Nor is it necessary that the word spoken, or

the act done, shall have been with the *intent* to deceive or mislead; it is sufficient if it have that effect.

"The general rule of equity is that any contract, of however solemn a character, may within certain limits be rescinded for constructive and, a *fortiori*, for actual fraud; and to state the matter with reference to the title of this section, any contract may be rescinded for *innocent* representation which was sufficient inducement thereto. The 'fraud' upon which a proceeding to effect recission is based is found in the purpose, or it may be the actual attempt to enforce the contract after knowledge of the falsity of the party's representations has been brought home to him. Knowledge at the time the representations were made that they were false, only makes a stronger case; it is not essential." Bigelow on Fraud, Vol. 1, p. 411.

If parties thus dealing at arms' length are to be held to such strict accountability for misleading, by word or act, the other party to the contract of sale, *a multo fortiori*, will parties occupying a confidential relation to each other be held to such accountability? We are not to be surprised, then, on finding that the law requires a party occupying such a relation to go even further than the ordinary seller or purchaser. While the duty of the latter is merely negative, there being no obligation to impart information, provided he neither says nor does anything to mislead, the former has imposed upon him the positive and affirmative duty of fully disclosing every fact within his knowledge calculated to affect the conduct of the other party over the subject of the contract. And though the maxim, *simplex commendatio on obligat*, the mere "trade talk" of merchants applies to the ordinary bargain and sale, it has no application, says Mr. Bigelow, in his work on Fraud, Vol. 1, p. 496, to a case "where one of the parties to a sale *assumes to have special knowledge* of the value of the property, in regard to which the other being known to be ignorant, trusts entirely to the good faith of the former, to the former's knowledge." In such a case he says: "It may be very proper to treat *representations of value* as standing upon

the same ground as representations of facts." That is to say, a misrepresentation of either, whether knowingly or innocently made, is a ground for rescission.

This exception to the rule of *simplex commendatio* applies for even greater reasons to a purchase by a partner having knowledge of the value of the interest he is purchasing from a partner not having such knowledge. There can be no "trade talk" between such parties. When the purchasing partner with knowledge says to the selling partner who is without knowledge, "I am paying you more than I *ought* to pay," or "more than I can *afford* to pay," it is a misrepresentation of fact if it be not true.

We have no doubt the defendant will say: "But it *is* true. It was more than I ought to pay, for I had done all the work in these cases and Cummings really did not deserve even what I offered him, and that was what I meant when I used those words, 'It is more than I *ought* to pay.'" Well, we know that even if he had meant them in that sense the statement was not true, because under the terms of the partnership agreement Cummings was entitled to one-half of these fees without regard to the work he did in respect of them, and, furthermore, the defendant has given his meaning to these words, "more than I *ought* to pay" by using them in another form, "more than I can *afford* to pay," and he himself must admit that *that* was not true, for he was paying Cummings with the latter's own money. But conceding for the sake of the argument that the expression was true in the *sense* that the defendant claims to have used it, that fact cannot avail him as a defense; for—

"The rule fixing liability for false representation, assuming the presence of other elements, is not to be evaded by any suggestion that the representation is *capable* of being understood, as by a merely literal interpretation, or by some forced meaning, in a sense to make it true. If it wear a garb which, under the circumstances would deceive a man of fair intelligence, it is false under the law." Bigelow on Fraud, Vol. 1, p. 503.

So that it is not what Baker meant, but what Cummings thought he meant, which fixes the meaning of these words: "It is more than I can afford to pay you." Cummings with the confidence which we have seen he had in Baker—"every confidence," he says, "up to that time that I ever had in any man living," (*ante* p. 13)—a confidence which the law allowed him to impose, had a right to believe, and did in fact believe, as he tells us, that Baker's statement was true, viz., that his one-half interest in the inspector cases was worth about $15,000. Mr. Justice Hagner in his opinion rendered in special term of the Supreme Court of the District in this case (Rec. 213) well states the law upon this declaration of Baker's to Cummings.

"His declaration that $15,000 was 'all he ought to pay,' or 'could afford to pay,' uttered by one partner to another about a subject with which he was presumably familiar, cannot be regarded merely as the *simplex commendatio* of a seller in an ordinary bargain and sale, even between strangers dealing at arms length, but must be considered as a distinct assertion of his belief; which, as was said by Judge Story in Stubbs *vs.* Eddy 4 Mason, 423, 'is an affirmation of a fact, that is, of the fact of belief; and if it is fraudulently made to mislead or cheat another, to abuse his confidence, or blind his judgment, it is in law and morals just as reprehensible as if any other fact were affirmed for the like purpose. The law looks not to the nature of the fact averred, but to the object and design of the affirmation.'"

But we are told that Baker was buying an interest in a class of cases that depended on a contingency and took a consequent risk. Was it a contingency? By no means; for every one of these cases were as certain of payment as a government bond is of redemption. The law affecting them had been settled by the departments and the courts. Their collection was but a matter of departmental routine and there was not a failure to collect a single one of them. But suppose we admit for argument's sake that these uncollected cases were contingent. Nay, suppose we admit that every single one of those not then allowed and appropriated for would fail of allowance or appro-

priation, what would have been the result? Why even then Baker would have been $744.35 ahead of his "trade." He had absolutely that much ahead in any event, for $15,744.35 was the net amount which had already been appropriated of Cummings' share of the fees, and $15,000 was all that he paid him for his interest. What risk did he then take? It is folly to speak of risk when the purchase is made with the seller's own money and if there is anything more certain than another in this case, it is that Baker never invested so much as *one dollar* of his own money in this "trade" with his partner, but on the contrary used Cummings' own money with which to "buy him out," money which it was his duty to have told Cummings was then due him whether they made a "trade" or not.

This question of contingency was also discussed in Brooks *vs.* Martin, *supra*, where Mr. Justice Miller, speaking for this court said:

"It is said that the soldiers would seek to reclaim the warrants or the lands on which they had been located, under the provisions of the act of 1847, already mentioned, must have detracted largely from the amount which any prudent man would have given for Martin's interest in the concern. This danger was, however, a very *remote* and *improbable* one, and must have so appeared, when we consider that these claims have been bought from young men scattered over the different States of the Union, with no means of ascertaining where the warrants were located or in whom the title was vested; and that the amount in each case, separately, was not worth the trouble and expense of the search and subsequent litigation."

Now, what was the condition of these inspector cases before the Department at the time of Cummings alleged assignment? Twice their validity as a just and proper claim against the United States had been decided by the Court of Claims. In obedience to those decisions, for over ten years the Treasury Department had been allowing, and Congress regularly appropriating, the amounts necessary to pay them as fast as they could be settled. *That very year* an appropriation

of $130,000 had been made to pay them and Baker had collected nearly all of it; indeed, enough to pay him $744 more than he paid Cummings for his entire interest—past, present and future. It was as certain that the remaining claims would be paid as it was that the Department would, in the due routine of business, allow them. What other contingency was there? Was it that his clients would seek to cheat him of his fees? No; because he had that under control by his powers of attorney. But suppose he had not. It was, in the language of Judge Miller, "too remote and improbable" that any thing like this would or could occur, and it is not shown in evidence that he ever lost a dollar by a refusal of a client to pay his fee; but if it had occured so that every one of these inspectors had in some way, which we cannot imagine, cheated him out of his fees, so far from being a loser he would still have been, as we have seen, $744.35 ahead. So much for the contingency there was about it.

Baker's answer and testimony are filled with slanderous averments and petty accusations against his partner of fifteen years, all of which are, of course, denied and proven to be false; but if all of them were true they would help, rather than hurt, the plaintiff's case, for the more neglectful, inattentive, careless and ignorant of his business Baker can show his partner to have been, by just so much more was it incumbent upon Baker to see that that ignorance was not used by him to his partner's detriment, when they were "trading" with each other. If Baker had said to him, "Well, if I got the best of you it is your own fault, you had the same chance to find out the value of your interest that I had, and if you did not do so you cannot blame me for looking out for myself," it would not have been the first time that such an expression has been used by men who have made what, for a compromise with their conscience, they call "a good bargain." In point of fact Baker does say something of this sort. In his answer (Rec. 10-11) he says:

"This defendant further avers that *his knowledge of these cases was derived solely from his study and work;* that complainant *could have had an equal knowledge of them in the same way*, and that frequently defendant asked complainant to render services in connection with them, and that more frequently than otherwise the complainant neglected to do so. This defendant says that at all times the complainant, prior to his sale to the defendant of all his right, title and interest in said 'Inspector Cases,' had full and free access to and use of all agreements, books, papers, records, and all other memoranda, which pertained to, or in any manner had any connection with those cases, and that *if the complainant did not avail himself of the opportunities that surrounded him in regard to them, he is alone to blame*, and any attempt to censure any one else comes with a very bad grace from the complainant, having within his knowledge the truth of the facts herein set forth by the defendant."

But the negligence of his co-partner, in acquiring independent information, even if under the circumstances of this case it was negligence, will constitute no defense for overreaching him.

"It is no excuse for, nor does it lie in the mouth of the defendant to aver, that plaintiff might have discovered the wrong and prevented its accomplishment had he exercised watchfulness, because this is equivalent to saying: 'You trusted me and therefore I had a right to betray you,' *vigilantibus et non dormientibus equitas subvenit*, is without application here, it only applies where party being apprised of, slumbers upon his rights." Pomeroy *vs.* Benton, 57 Mo., 543.

Similar language is used by the Supreme Court of the United States in Kilbourn *vs.* Sunderland, *post.*

Upon the same principle it is no defense to say that he gave the plaintiff certain papers and documents "with the remark that the defendant would tell him any thing in regard to them or answer any question in regard to them which he, the complainant, might ask," and that the defendant never asked him any questions, or that he answered all that he asked. (Ans., p. 17.) *He must not wait to be asked*, but of his own motion he must put the plaintiff in possession of all the facts and all the

information he himself possesses. Because the complainant may be negligent or careless enough not to ask is no reason why he should fail to tell. But, as we have seen, he substantially admits that he did undertake to tell—falsely however,—the appellee what the value of the interest was—"the value is such that $15,000 is more than I can afford to pay," which is the same as saying "$15,000 is much more than your interest is worth."

There is, however, of all the really *material* facts in the case but *one* averment of the plaintiff which is denied by the defendant. The partnership, the assignment, the amount of fees collected at the time of the assignment and the amount of fees collected afterwards are all admitted, the one material fact charged by Cummings and denied by Baker is:

That Baker represented to him at the time of the assignment that the amount of fees already earned were only $20,000, instead of $32,977.51, as they really were, and that the claims on file out of which fees were to be subsequently collected amounted to only $80,000, instead of $250,000, as was the actual fact.

If Cummings tells the truth about this there can be no question as to his right to have the assignment set aside. Let us therefore examine the evidence upon this subject.

In the first place it is to be observed that in the nature of things there can be but two witnesses to what representations, if any, were actually made by Baker to Cummings. They both agree that no third person was present. Cummings on the one side and Baker on the other must ever remain the only witnesses to the conversations had between them which resulted in this assignment. How shall we reach the truth of the matter? The answer is plain.

1st. By testing the credibility of the witnesses by the evidence they have given as to the known facts of the case.

2d. By the probabilities of the case.

And, first, as to the question of credibility. If we exclude Baker's denial of this material fact, there is not a single fact

material to the issue sworn to by Cummings, either in his testimony or the bill of complaint, which is not either admitted or proved to be substantially true. We challenge the learned counsel for the defense to a successful contradiction of this statement. On the other hand, how is it with Baker? Let us take up his answer to begin with. Cummings had stated in his bill that the fees he was entitled to receive at the time of the assignment were more than $16,000. The list of drafts in evidence is conceded to be correct, and they show that at the time of the assignment the fees due the firm were $32,971.51; one-half of this, or *over* $16,000, was Cummings' share. Before filing his bill, Cummings had ascertained this fact by an examination of the drafts in the Treasury Department. He had no such schedules, such as Baker had, to enlighten him as to the facts, and therefore could not know that this $32,971.51 was subject to the small deduction of $1,488 on account of fees paid other attorneys. Consequently, he told substantially the truth when he came within $256 of stating his share of those fees at over $16,000. Now, how does Baker deal with this matter? In his answer, beginning of paragraph 7, he says:

"That when the complainant stated that he (complainant) was entitled to more than sixteen thousand of the fees in the cases appropriated for at the time of the said bargain and sale, that he (complainant) said that which complainant had every opportunity and reason to know was false."

Baker had in his possession, when he wrote this answer, the schedules, prepared by himself, which showed that Cummings' statement was substantially correct. So that it is Baker in this instance and not Cummings, who "stated that which he had every opportunity and reason to know was false."

Again, Baker denies most emphatically in his answer, and he does so in more than one place, that he ever stated that the remaining cases would amount to about $80,000.

"This defendant further denies most positively that he ever stated to the complainant that the remaining cases would amount to about eighty thousand dollars. This defendant *had made no computation* relative thereto and could not have so stated." (Answer end par. 6, Rec. 13.)

And so in his testimony—

Q. Had you ever made any computation as to the aggregate amounts due on the cases filed and submitted?
A. Nothing. Only a general calculation of each case when filed. I had not *aggregated* them. (Rec. 101, top of page.)

If Baker had made no computation, it was not because he thought the computation was difficult; nor because he had not the material with which to make it, for according to his own statement he had "all the books, papers and documents" from which to make such a computation, and the fact is, notwithstanding his statement to the contrary, he did make such a computation, unless he desires us to disbelieve his further statement in the same answer; for elsewhere we find him swearing with equal positiveness to a deliberate statement which scatters to the four winds his equally deliberately sworn statement that he had made *no computation*. In his answer (Rec. 11, bottom of page), after stating that he gave Cummings certain books, papers and documents to take home with him and from which he might make his own computation of the inspector cases, he says:

"The defendant further says that these books, papers and documents were all the books, papers and documents, except the Statutes of the United States, which the defendant *used to ascertain the nature and amount* of the 'inspector cases,' and that they were full and ample for that purpose."

If this statement is true then he *had* made a computation and ascertained "the nature and *amount* of the inspector cases," and the statement that he had "made no computation relative thereto" is false, or vice versa. Can the credibility of such a

witness be relied on to explain away the enormous unfairness of this "trade?"

He says that by means of the documents which he gave Cummings the computation was an easy one.

"It was a very easy matter. It ought to have been done by any one with the possession of the data furnished the complainant, in two days time at most."

Q. Would it have been any more laborious to calculate the cases filed than the cases outstanding?
A. Certainly not. (Rec. 102, bottom of page.)

The wonder is how this defendant can swear so positively as to the ease with which the computation could be made when in another breath he swears he never—no never—had made it himself. But is it credible—indeed is it not perfectly incredible, that a man should pay $15,000 for an interest in any business without having made "a computation relative thereto," especially when the computation was "a very easy matter." Men do not buy in that way an interest in a business involving thousands of dollars, unless they are morally certain that the value of the interest largely exceeds the price offered, and if Baker was of that mind, then he certainly committed a fraud on Cummings by not telling him so. Neither does a purchaser trade in that way when he is of the opinion that each man must look after his own—not the other's—interest; at least, a man does not who can say to the seller, "I will not advise you, for we are trading. You must act upon your own judgment." Upon whose judgment did Baker act, if he had made no estimate of the value of the thing he was paying $15,000 for?

At least two weeks before this "trade" Baker had made a schedule of the cases already appropriated for (Exhibit H. M. B. No. 3, Rec. 174), showing in columns of figures everything about them and the amounts due. He tells us (Rec. 94, near bottom of page) that by adding up six columns of the figures

of this schedule any one could tell at once what the fees amounted to, and yet he would have us believe he never did it. It is remarkable, too, that he kept this schedule from Cummings until *after* the "trade" was made. This schedule will come up again, however.

But strange as it may seem to us how a man with Baker's intimacy with these cases and on the point of paying his partner $15,000 for his interest in them, should have made no computation of the value of that interest, yet it is not nearly so incredible as his statement that Cummings, the partner who he says asked him more than once for advice as to whether it was best to take $15,000 for his interest or not; the partner who had never worked in the cases (for Baker "did all the work"), the partner who knew them, as Baker himself admits, "only in a general way;" the partner who was hesitating for weeks whether to sell or not, never once—no, not once—that Baker "remembers," ever asked him what the aggregate of the cases was.

Q. Did he ever ask you for the aggregate net amount of the cases then being paid?
A. He did not, he had the documents which showed it.
Q. Did he ever ask you for the aggregate of the cases then filed and in the process of adjustment and of the outstanding cases?
A. *Not that I remember.* (Rec. 103.)

Observe that Cummings (according to Baker's own testimony) is asked to sell out his interest in these cases; before he concludes to sell he asks Baker for advice about it more than once. And yet he never once says, so far as Baker can "remember," "Well Baker how much do you think these inspector cases amount to, are there ten, twenty, thirty, forty, fifty thousand dollars of them left?" If Cummings, groping in the dark and begging for advice, did not ask his partner who knew all about these cases, who had worked alone in them for nearly ten years, and who had filed every one of them, for some idea

of their aggregate amount, then Cummings' mental make-up is different from that of any reasonable being under heaven.

On the other hand, Cummings says in his testimony that he *did* ask Baker for the aggregate and that it was given in the figures heretofore stated. Baker it will be observed does not venture upon a categorical denial of Cummings' statement, he limits himself to "Not that I remember." The positive affirmance of a credible witness cannot be overcome by a mere "*non mi recordo*" answer.

But there is yet a still stronger circumstance going to show that Cummings tells the truth as to Baker's misrepresentations of the aggregate of the inspector cases. The defendant has offered in evidence a paper written by the plaintiff shortly after the sale of his interest which on its face shows itself to be a sort of private diary of the days when wounded by the importunities and criminations of his partner and with sensibilities wrought into quickness by the injustice of his treatment he brooded over it and wrote down, according to what he tells us was a habit of his, his ruminations upon the subject. This paper, which he entitles "Thoughts and Meditations" was never intended for human eye, and was only shown his partner about three years afterwards in a moment of ebullition of feeling. Time had made its disclosures, and he wanted to justify himself by reading his meditations of those days to the man who had been the subject of them. Baker asked to be allowed to take the paper for a few days, presumably for a more quiet reading. In confidence it was given him and in violation of that confidence he gives it to the world by offering in evidence an unauthorized copy of it. By doing so the pit which he dug for his neighbor he has fallen into himself. For if ever out of the fulness of a man's heart the truth must eminate it eminated from Cummings when he privately put in writing his meditations upon the occurrences of those days. A man may deceive others but he does not lie to himself. A thousand times more credence must be given to the entries in a private diary than to

the contrary statements of a man who has thousands of dollars at stake upon his testimony. Let us see then what was entered in this diary so far as it is material to the issue now raised. It is Exhibit H. M. B. No. 2, and begins at p. 94 of the record.

"In the beginning of 1886, this year he would ask me how much I would take for my share of the inspector cases, and would say that he had done most of the work on them and should have the fees.

Baker never said anything about the matter till it looked that my insurance and lost time cases would be a failure. It was in January that he first made a proposition, and I made no reply. In August he brought it up again, and insisted on his having the greater part of the fees.

Baker in August proposed that we divide all fees on cases taken by us prior to January, 1885, and after that date he should have all the fees, and I gave him no reply.

Again, same month, proposed it, and I told him that I recognized that he has done more manual work for the firm in the last eighteen months than I have, but it was because I had already allowances for more than $25,000 fees, and have cases, $50,000 new ones taken by me since January 1, 1885, and my cases, if allowed, will give me more than $50,000 fees, but that it is no use in having cases adjudicated then.

Baker has worked well, but it has been on one class of work; that is, writing to the inspectors; the same sort of letter, he has their address, and the whole business could be done by a woman in five days in a month, at $10 a month. But, no; he must do all this writing himself, and I do not call it work, but simply wasting time that he could employ better.

In my cases I do not know where the parties live or did live or who the real parties are in many cases.

August 19, 1886, Baker again pushed the matter, and said he would give me $15,000 for my portion of the fees in the inspector cases.

I say I do not believe in any such thing, and say that I do not know what powers we have or what percentage we have, what have been allowed or what will be allowed in future, and he said, "There are the powers; pick them out."

I try it, but could make no headway, as he had had control of the matters himself, and I have been kept in ignorance of their condition; he always keeps the powers or contracts locked up; he keeps all data of what has been paid locked up.

He says that a large percentage has to be paid to other attor-

neys, and in many cases the fees are 10, 15 and 20 per cent., when I had supposed that nearly all were to pay 25 per cent.

I ask him specifically what he estimates the fees will be, and he has distinctly said that he did not think the fees in the cases allowed would be more than $20.000, and he says that there will not be allowed hereafter more than $75,000 at the most.

August 26, Baker still persistent, money is not everything. I do not wrong Baker or any other man. I do not want trouble with him; life is too short to make it a money grabbing game, and to please him I do, or have made up my mind to what I consider an unjust thing to myself; but if he can afford to do wrong I can afford to suffer. I tell him, relying on his statements as to the amount of fees that will come out of the cases just paid by last Congress; that is, he said the fees were not over $20,000, and that not more than $75,000 will be allowed hereafter; that I will do one of three things: I will take $15,000 for my interest, or I will take one-half fees in all cases held by us prior to January, 1886, or that I will take one-third fees in all cases, inspectors, and I depend on his doing what he thinks is best for me and my interest, as he knows about the situation of the cases and their prospects.

September 7, 1886, Baker gave me his check for $15,000, saying that was best for my interest, and I depend on his honesty as to representations. This settlement on his statements will give $15,000 out of the $20,000 fees on present settlements, leaving him only $5,000 out of this batch; but, as he says that the future payments will be about $75,000, on which he will get, calling the settlements $80,000, $20.000 of fees, that will give him $25,000 to my $15,000, or $10,000 more than mine, and that is fair looking at the matter from his point of view.

Wonder how will it come out. What have I done wrong. Baker complains, I did do one wrong thing, and that was when I did not go into the post-office cases, and I wanted to, and talked with Baker about it, but he said we had better not, that we had a good thing in the inspector cases and better not cut into Spalding's business; we would not like it if any one of our friends did so by ours, so I dropped it, and now Baker has dropped me out.

Is it right, but what is the use of fighting.

Baker partnership was of his own seeking, not mine (sic) wish. I have never asked his aid, borrowed one dollar, asked his name or endorsement, or his help in any way, shape or manner, I have been careful not to do so, on the other hand I have loaned him thousands of dollars, raised thousands of dollars for him, gotten his paper cashed, &c.

He has never lost one dollar by me, or by any friend of mine or by one that I introduced to him. I have lost thousands by those that he introduced me to, depending on the character he has given them.

Suppose my cases had gone through and his had been stopped as my (cases) have been, would he have been as anxious to do this unjust act?

If the allowed and paid cases give more than say $26,000 fees, in place of his stated $20,000, he has simply deceived me; if future allowances for more than $100,000, he certainly misstates knowingly.

I won't condemn too hastily.

September 7, 1886.

Now Baker, a few days after this paper was loaned him, handed Cummings his answer thereto (Ex. H. M. B. Nos. 10 and 11, Rec. 195); the latter is a very voluminous paper and has been offered in evidence by him. Of course it cannot be received as evidence *for* him, but may be used as evidence *against* him. It is really worthless for either purpose, except in one important particular, and that is that although it will be found to contain numerous denials of the various statements made by Cummings in his "meditations," *nowhere does Baker make denial* of the specific charge that at the time of the negotiations which were consummated by the assignment, he told Cummings that the fees in the adjudicated cases amounted to $20,000 and that the cases yet to be appropriated for amounted to from $70,000 to $80,000. Nor, when in 1889 Cummings writes him a letter containing the same charge does he in his reply deny it, although his letter is written in answer to the accusation that he had misstated the facts. Nor will any denial of this statement of Cummings as to the figures named be found in any of the defendant's letters in evidence. The *first* time that such a denial appears is *after* the bill was filed and when it became absolutely necessary to deny it in his answer or give up his case. We submit with earnestness that all the *circumstantial* evidence of the case supports the contention that credence must be given to the plaintiff's rather than to the

defendant's statement as to what was said about the aggregate of the cases.

So, too, on the question of credibility, we have Cummings' statement that Baker told him not to put the $15,000 check in bank immediately, because there was not enough money to meet it. Baker both on direct and cross examination emphatically denounces this as false, and says that he had enough in bank to meet the check." (Rec. 95 and 118.) After repeated efforts to keep the only testimony from the Court which would establish the truth or falsity of this statement, we get the bank Cashier's testimony, and he shows by the record that it is Baker's, and not Cummings' testimony which is false.

So much for credibility; now as to probability. As we have already said, it is as incredible to suppose that these partners did not talk over together the matter of the aggregate of these cases as it is to believe that Baker had not, with his constant handling of them, through schedules and lists prepared by him, and Treasury Registers and what not, made some calculation as to their amount, especially as he was about to buy out his partner's interest in them. He says, in his answer as well as in his testimony, that his agreement to give $15,000 was *based* upon Cummings' offer to take one-third of the fees in the future; how could he have "based" his offer of $15,000 as equivalent to a division of future fees on a certain proportion unless he had made some *calculation* of the amount of those fees from the data in his possession, which data he admits were simple and the calculation easy? Let his astute counsel answer this if he can.

If the Court believes as, we submit, reason, common sense and our knowledge of the course of business men in such matters, compel us to believe, then it must believe that Cummings tells the truth when he says that he asked Baker for the aggregate of the cases, and that Baker is wilfully misstating the facts when he says that Cummings not only never asked him about it, but he himself never had made any computation rela-

tive thereto. If, therefore, Cummings has told the truth about this matter, and Baker the contrary, shall we, notwithstanding, believe Baker's, and disbelieve Cummings', further testimony that the amount stated to him by Baker was $20,000 in fees in allowed cases and $80,000 of cases pending, out of which fees were yet to be obtained? It is, we submit, perfectly apparent that some statement, whether this or some other, of the *aggregate* amount of these cases must have been made by Baker. Now, if he stated the *true* amount, Cummings, unless he is an idiot, would never have sold out for $15,000, because he would have known that his share of the fees *then due* and payable to him amounted to *more* than $15,000, to say nothing of the $36,000 in fees which he would derive from the cases not yet appropriated for by Congress. The fact that the record shows Cummings to be a lawyer, a college graduate and a man of business standing in the community, excludes the hypothesis of idiocy, and, therefore, the sylogistic conclusion follows that the *truth* was not told by Baker as to the aggregate of these cases. Then if the truth was not told him, it makes no difference whether Baker made the misrepresentation wilfully or not; if he even made it believing it to be true, yet, as it has turned out false, he cannot be permitted to benefit by it.

"It is not material whether or not the person making false representations upon which another acts to his own disadvantage, knows them to be false; the assertion to the injury of another of that *not known to be true* is equally reprehensible in law as in morals with the assertion of that known to be false." 1 Story Eq., § 193. Pomeroy *vs.* Benton, 57 Mo., 548, a partnership case.

"Where a managing partner in the settlement of the partnership accounts, with a view to a sale of his interest, makes a representation relative to the extent of the liabilities of the firm, upon the faith of which his co-partner, who has no actual knowledge of the partnership affairs, purchases his interest in the concern and assumes the payment of the debts due by the firm, which representations turn out to be untrue, whereby his

co-partner sustains a loss; the latter may have relief in chancery, and it is immaterial whether the representation was *intentionally* or *innocently* made. Hopkins *vs.* Watt, 13 Ill, 299.

"Where parties deal with each other touching the partnership affairs, and their means of knowledge relative to the situation of the firm is not equal, he who has the superior information must not make any representations which are untrue; if he does, a court of chancery will interfere and relieve the injured party *although the partner making the representations was not guilty of fraud in fact.*" *Id.*

The Suppression by Baker of the Schedule, Exhibit H. M. B., No. 3.

Cummings tells us in his testimony that when Baker handed him certain papers and documents, including a so-called schedule of cases, that he took them home with him to try and figure out for himself what the value of the interest was which Baker wanted to buy. He says that after making the effort he found that it was impossible, and so told Baker. Baker admits he asked him for advice when he brought the papers back, but, he says, he refused to give it. He testifies (Rec. 93, bottom of page.)

"I said: Well, Cummings, what conclusion did you come to? He said: *I don't know much about it*, but if you *insist* upon it I guess we can trade."

And again he says (Rec. 94, middle of page) that on the next day:

"He came in in the morning and said to me: 'Well, Baker, if you *insist* upon something being done, and if *you* think it *best* for me, I will take $15,000.' I said: 'Mr. Cummings, I think that is *more* than I ought to pay, but you must decide whether it is best for you or not. I have no advice to give in this matter. This is a trade.'"

He also gives us, on page 97, near bottom, of his testimony, another version of this:

"I was out of the office when he returned them; when he came back I think I spoke to him first about it, and he said *he hardly knew* what to say. There was nothing definite accomplished that day. He asked my advice in regard to it, and I distinctly declined to advise him. I said, 'We are trading and you must act upon your own judgment.' On the next morning he came to the office and said he had been thinking it over and if I was a mind to give him $15,000 he would trade. I said that was *more than I could afford to pay*, but that to end the matter and have an end of the whole thing I would give it to him."

It is perfectly apparent, if this testimony of Baker's is truthful, that Cummings did not *desire* to sell his interest. It was only because Baker was *insisting* upon it; because, as Cummings says, of his "importunity" and for "peace and harmony" that he consented to part with it; for, says Baker, "I insisted upon his selling or dissolving partnership." It is also perfectly apparent from this testimony that Cummings had not learned the true aggregate of the cases from these documents, because we find him saying to Baker, "I don't know much about it." "Do you think it best for me?" His mind was in a state of uncertainty, and he appeals to his partner. If Cummings had ascertained from these papers and documents that *at that very moment* his share of the net fees amounted to $15,744, and that in a short time $36,000 more would be coming to him, can any reasoning man suppose that he would have asked whether it was best for him to make such a trade, and can it be reasonably said that if Baker had thought for one moment that Cummings knew the *actual truth*, he would have said to Cummings, "Fifteen thousand dollars is *more* than I can *afford* to pay," for Cummings could well have replied, "Why, man, you owe me nearly $16,000 now—at this very moment. Do you suppose I am going to make you a present of that, and, besides, throw into your lap as a further *gift*

$36,000 of fees, which will in a short time be due to me? Do you think I am an idiot?" And yet Cummings did this very thing when he made the "trade." What audacity of assertion to say that he made it knowingly!

It is impossible in this brief to show the Court by a criticism of the papers and documents handed Cummings by Baker before the consummation of the sale, that no intelligible idea can be gathered from them of the value of the inspector cases. This can only be ascertained by examining the papers themselves. We may say, however, here that we have Baker's admission that no correct computation could be made from them *alone*. It is true he stated elsewhere in his direct examination that it was a matter of easy computation; but we appeal from Baker, in the hands of his counsel to Baker under cross-examination. Among the papers handed Cummings was Exhibit H. M. B., No. 7 (Rec. 184), the large schedule, from which Cummings with the assistance of the other documents was expected to figure out the amount in value of the inspector cases. Now here (Rec. 126) is what Baker says of it:

Q. In reference to that document marked H. M. B., No. 7, is this one of the papers that you handed to Mr. Cummings to advise him of the condition of the business?

A. Yes; but I think possibly these blank sheets have been put on this as a kind of cover to this paper.

Q. What does that paper show?

A. This paper shows the name of the client, and, in general, the period for which arrears of salary were claimed for the client. For instance, here is the first name, Harry J. Ashmore, Burlington, N. J., from August 1, 1875, to November 30, 1875. Burlington, N. J., represented his place of service, and the dates represented the period of the service for which the claim was made.

Q. *Does that show how much was due to him?*

A. *No; this does not.* His salary, ordinarily, was taken from the Treasury registers, and the difference between that salary and the legal salary, as specified in the statutes, would be the amount due.

Q. Then in order to make this paper of any assistance to Mr. Cummings it would be necessary for him to search the Treasury records?

A. No, sir; I said the Treasury registers.

Q. That is the record, is it not?

A. It is a public document, the same as a blue book.

Q. You may change it to Treasury register and then answer the question?

A. It was one of the LINKS *necessary to complete the computation.*

Q. Had you in your possession anything that supplied that *link?*

A. *I had not,* unless a case had been adjudicated, as shown in document 70 and 225.

So that this intricate computation which on his direct examination he repeatedly states was "very easy to be done," was after all impossible without "the *link* necessary to complete it," and this link he admits he did not have, except partially, and therefore could not have given it to Cummings.

But Baker *did* have at this time a document in his possession which would have shown at once, by the simple addition of six columns of figures, that the fees already allowed and in process of collection were $32,977.51. This paper is a schedule marked H. M. B., No. 3. It was prepared, says Baker, "prior to any date there is on it." (Rec. 121, bottom of page.) The earliest date on it is August 30, 1886; it was in Baker's possession and *after* the assignment was made, not that Cummings might examine it, but with the request that Cummings (as he, Baker, was going out of town for some time) would mark off the remaining accounts as they were paid, and he says:

"If I had told him [Cummings] there were only $20,000 in fees in these cases, all that he would have had to do to have proved that I had misstated the case would be to have added up six columns of figures of letter page size, as shown in the exhibits." (Rec. 94.)

And on page 127 of the record he admits that the fees shown

by this paper to have been earned prior to September 6, were $32,977.51. Here, then, was a schedule in Baker's possession, at the very time that Cummings was struggling over a mass of papers and documents, which would have shown him in twenty minutes the exact truth as to the allowed fees. Baker admits that he did not give Cummings this paper until *after* the trade was made. Why did he not do it? Why not (if he desired him to obtain the information he was seeking) have placed in his hands this schedule and have said to him: "Cummings, add up these six columns of figures and they will show you exactly what you want to know. They will show you that our share of allowed fees to-day amount to nearly $33,000, and I have already received over $26,000 of it, and the drafts for the rest of it are now in the Treasury ready for delivery whenever I choose to call for them." Oh no! to have shown Cummings this schedule would have spoiled the *trade* in which "each party was to look out for himself." In his own language "it would have proved that he had misstated the case." Consequently it was sedulously withheld. Baker is cross-examined about this paper. (Rec. 120.)

Q. In other words, does not this paper, H. M. B., No. 3, about which I am now questioning you, contain *all* the cases of Cummings and Baker that are mingled with all other cases in these public documents?

A. That paper is supposed to contain them.

Q. Will you state whether it does or not?

A. So far as I know it does *accurately*.

Q. Then if this paper had been handed to Mr. Cummings, there would have been no need of checking off anything in in the other book, would there?

A. Not except by way of comparison.

Q. He could have gotten no further information from the Congressional documents in respect of the matters that you were negotiating for than is contained in this paper?

A. I presume not.

Q. Why then did you not hand him this paper?

A. *Because I* THINK *it was not in existence at that time.*

Q. When was it prepared?

A. *It was prepared just about the time the drafts began to be issued.* It was after the appropriation was made which was directed by documents numbered 70 and 225.

So, then, this is his excuse ("that it was not in existence at that time") for not giving this complete and accurate schedule to Cummings instead of placing in his hands a mass of confused and intricate documents. Let us see whether this excuse is founded in fact? As we have seen he admits that it was prepared prior to any date upon it, which is August 30, six days before the assignment. The other documents he had placed in his hands some "two or three weeks" prior to the assignment (Rec. 93, tenth line from bottom). "It was prepared just about the time the drafts began to be issued" *supra*. Well, the drafts began to be issued August 23, upon warrants dated August 19 and 20, and upon the certificate of the Commissioner of Customs dated August 13–14, so that carries us back still further. The strong probability is that it was prepared soon after the appropriation bill had passed the House, which was some time in June. Cummings says that was the custom, and Baker does not deny it. But, be that as it may, it is demonstrated by Baker's own testimony that it was in existence for at least three weeks before September 6, the date of the assignment: and yet during all that three weeks in which Cummings was asked to struggle and sweat over this worse than Chinese puzzle of partial schedules, contracts, documents, &c., from which Baker admits that Cummings told him he could not get much information, and which he, also, admits lacked "the *link* necessary to complete the computation," he, Baker at that very time, had in his possession, a paper which he himself calls a "complete and accurate" schedule. This paper, he tells us, would have corrected any misstatement of his and have solved the difficulty in as much time as it would take to add up "six columns of figures," say twenty or thirty minutes. Was ever a purpose to wilfully suppress the truth as to the *real amount* of these fees more completely exposed?

How did Baker prepare this schedule, H. M. B., No. 3? Is it not reasonable to suppose that he must have gotten some of the data for it from the very documents and papers handed Cummings? If he did, and who can doubt it, then he must have prepared it before he gave those documents to Cummings, because Cummings kept them from the time they were given him up to a day or two before September 6, and it is admitted that this schedule was prepared about August 20—"the time the drafts began to be issued." Here then is another demonstration of the falsity of the statement that "it was not in existence" when the documents were handed Cummings. We ask the Court to read the cross-examination of Mr. Baker upon the subject of this schedule, commencing at page 120 of the record with the question "I hand you now a paper marked Exhibit H. M. B., No. 3," etc. It is too long to insert here, but it so thoroughly exposes the want of candor on the part of the defendant that we would neglect our duty did we not request its careful perusal by the Court.

Has not the plaintiff proved out of the mouth of the defendant himself the truth of his story, viz: That Baker misinformed and misled him as to the amount of the inspector cases? Can any one doubt now the truth of what Cummings says in his testimony?

"When he gave me the papers to examine, I found that it was totally impossible to find or to make an estimate of the amount due or the value of those cases without examining every one of the thousand claims; and in that case I knew nothing about any of them, and I would have been obliged to consult Mr. Baker about every individual claim; so, after looking over the papers and seeing the utter uselessness of my attempting to make such computation, I gave them back again and told him that I should have to rely upon his judgment." (Rec. 22.)

And, again, on page 44 et seq. of his cross-examination:

Q. Mr. Cummings, did you get all the books and papers connected with the inspector cases, which were delivered to you,

as stated in the answer of the defendant, on pages 16 and 17 of the printed record.

A. I did not receive all the books and papers mentioned by the defendant in the answer to the bill. Some time in August, 1886, Mr. Baker gave me three large scrap books, containing in the vicinity of one thousand contracts. He gave me a number of Treasury registers; he gave me a list of cases that had been filed in the Department, but which were either tied up or disallowed, and which he called "doubtful;" he gave me a list of cases in which the fees were of other amounts than the regular amount of twenty-five per cent.; he gave me a list of cases also of those persons who had claims, but which he had been unsuccessful in getting, but I never saw any list of cases that were filed, and was not in the Department at that time; those papers I took home. The second morning after receiving the papers Mr. Baker asked me if I had come to any conclusion. I told him that I had not and I did not see as I could, because there was nothing in the papers to show whether the claims of this person or that person consisted of an amount of $1 or $1,000, and each case involved a calculation and an inquiry from him, and an examination of every claim covered by the whole thousand powers of attorney. Many of the cases had one allowance, some had two, and there was nothing to show in the papers what the case amounted to, generally, in the whole, or individually. I kept the papers about a week, when I returned them to the office and told Mr. Baker that I could not make any calculation upon them without we sat down and went through each case, but that he (Mr. Baker) knew how the cases stood, and that he could give me an approximate amount of what cases were filed and the probable amount of the allowance hereafter, and it was upon his own statement to me then, viz., that there was probably $75,000 and, possibly, $80,000 more claims that I acted.

Q. What books and papers mentioned in the pages 16 and 17 of the printed record that you didn't get?

A. I never received any list of cases then pending in the Treasury Department, except the list of cases that he called "hung up cases" or "doubtful cases" or "suspended cases."

Q. Will you name all the books and papers that you didn't get?

A. Well, I could not name all the papers that I didn't get, because that would include a great many. I have named all the papers that I did get.

Q. Now, what papers were there that you didn't get that would enable you to go over satisfactorily to show what was the amount of these claims?

A. I could not state, because I do not know whether there were any papers or not that would enable me to form an adequate idea of the amount of these claims.

Q. Are you able to say that Mr. Baker didn't give you all of the papers in those inspector cases?

A. I cannot say, because I do not know what list he had; I have stated all that he gave me.

Q. Were there any other papers necessary in those cases to enable you to reach a conclusion as to the results and the amounts of those cases?

A. There were no papers given me that would enable me to reach any conclusion, except as I have stated, to take each case and the whole mass of contracts individually and go through it and make a calculation; find out from Mr. Baker what had been allowed and to ask him individually in regard to each case.

Q. Then as I understand you, Mr. Cummings, none of the papers or books handed you by Mr. Baker would give you any information at all as to the character and position and result of those cases?

A. There was no doubt as to the results of the cases if the facts and the amounts could be arrived at by the individual calculation in each case, and I had nothing to show whether there had been any previous allowances, whether there was anything in the case why they should not receive the whole per diem as provided by statute.

Cummings also says, as we have seen, that he made the assignment and accepted $15,000 for his interest in these cases on the statement of Baker, that the fees in the adjudicated cases amounted to $20,000 or $22,000, and that the cases unappropriated for amounted to about $75,000 or $80,000, in which the fees would have been about $18,000 or $20,000. That, figuring on this basis, his share of the fees would have been about $20,000, and that he was willing to "knock off" $5,000 and accept from Baker in cash $15,000, thus making Baker's share $25,000 and his $15,000. This would have been a reasonably fair trade, and we submit that every fact in the case, and all the probabilities of the case, to say nothing of the demonstrated want of credibility on the part of the defendant establish the truth of Cummings' assertion. Let us not forget that this is the

only material fact in the case about which there is any substantial disagreement between Cummings and Baker, but though material it is not absolutely necessary to be established in order to entitle the plaintiff to a cancellation of this assignment. The defendant says that he made no statement whatever as to the aggregate of the cases, and that Cummings never asked him to so state. Incredible as this would seem let us, for the argument's sake, take him at his word; then, at least, the following facts are established out of Baker's own mouth.

Facts Established by Baker's Testimony.

First. That Baker had practically the entire charge of these inspector cases, and had had charge of them for years, during which time he had made himself thoroughly familar with them from every point of view, especially as to their amount and the settled law governing them.

Second. That Cummings knew very little about them having had very little to do with their prosecution.

Third. That Mr. Baker, to use his own words, was tired of doing all the work in these cases and dividing the pay with Cummings, although under the partnership division of the work it was his duty so to do.

Fourth. That Baker insisted upon Cummings, who was opposed to doing so, selling out to him, or to put it in his own words, " should either sell out or dissolve partnership."

Fifth. That Cummings, yielding at last to Baker's persistence and importunity, agreed to consider the matter of selling out, and to reach a basis for valuing his interest in the cases, asked Baker for information, which Baker answered by handing him a confused mass of papers and documents from which he, Baker, admits no calculation could be made without supplying other " links " which were not supplied.

Sixth. That at the time of handing him these papers and documents, he had in his possession, but kept from Cummings,

a schedule (H. M. B., No. 3) which contained a complete and accurate list of the cases then appropriated for, which list showed that there was then due Cummings $15,744 as his share of the fees up to that time.

Seventh. That Cummings offered to divide the fees on a certain basis or take $15,000 just as he, Baker, thought was best for him, Cummings.

Eighth. That Baker refused to advise Cummings, but told him that to end the matter he would give him $15,000, although that was "*more* than he could afford to pay," viz., more than it was worth.

Ninth. That when Cummings accepted $15,000 for his interest in the inspector cases on Baker's statement that it was more than that interest was worth there had already been allowed cases in which the *net* fees amounted to $31,488.70 of which Cummings' share was $15,744.35, and that upwards of $26,000 of this money was already in Baker's pocket and drafts issued and *ready to be delivered to him* for the remainder.

Tenth. That Baker, moreover, had, at that very time, on file in the department applications for allowances amounting to $226,916.47 and ready for filing applications which increased this amount to $275,099.58, the fees due on this amount being $71,743.50. See Auditor's report (Rec., 226).

Eleventh. That out of these cases, if there had been no "trade," Cummings would have received over $51,000, whereas, by means of this assignment, Baker pocketed nearly $83,000 in net fees, while Cummings received but $15,000. See Auditor's report from Baker's own account as filed.

Twelfth. That during the entire negotiation Baker, to use his own words, dealt with Cummings on the theory that "each man should look out for himself, just as in any other trade."

Considering the enormous disparity between what was paid for this interest and what it was really worth, considering how much Baker made and how much Cummings lost by reason of this assignment of his interest, will not a court of conscience find ample ground for setting aside the sale in the single fact

that the selling partner was in a very much inferior position in regard to knowledge of the value of the interest being sold than the purchasing partner? But if more than this be needed, will not a court of conscience, when the partner with full knowledge says to the partner with inadequate knowledge, who relies, and who has a right to shut his eyes and rely, on the latter's statements as a guide for his action, "I am paying more than I can afford to pay," find in such a false and *misleading* statement, whether made knowingly or not, an abundantly sufficient reason for setting aside a contract made upon such an inadequate consideration? It is too well settled for doubt that a contract between two men under such relations of confidence and trust as exists between two partners, one having knowledge of the facts and the other in ignorance of them, must be fair to the last element in it; must be tested by the "highest standard of honor"; the slightest taint, the merest suspicion of fraud, *when accompanied with gross inadequacy of consideration*, will condemn it to destruction.

"When the perpetrator of the fraud is the managing partner with the peculiarly intimate knowledge of the firm's affairs incident to that position, and the smaller opportunity for investigation on the part of the other partner, and with the degree of confidence reposed in a manager, a settlement induced by him, or a sale to him induced by fraud, *will be reopened more readily and more latitude will be allowed* than in other cases, *and want of vigilance on the part of the selling partner will be no defense.* Bates on Part., §961.

Nay, more than this: Mr. Justice Miller, in Brooks *vs.* Martin, 2 Wallace, 70, has laid down the condition—the sine qua non—which governs in cases where the proposition of purchase proceeds from the managing partner to a partner in ignorance of the actual status or not having the full knowledge possessed by the former. In such cases, he says:

"We lay down, then, as applicable to the case before us, and to all others of like character, that in order to maintain such a sale it must be made to appear, first, that the price paid ap-

proximates *reasonably* near to a fair and adequate consideration for the thing purchased; and, second, that *all* the information in possession of the purchaser, which was necessary to enable the seller to form a sound judgment of the value of what he sold, should have been communicated by the former to the latter."

In the case at bar neither of these important requisites is to be found.

First. The price paid does *not* approximate reasonably near to a fair and adequate consideration for the thing purchased. Secondly, *All* the information in possession of the purchaser which was necessary to enable Cummings to form a *sound* judgment of the value of what he sold was *not* communicated to him by Baker.

Such is the case we have brought into this court. If it is not such a case, then no sale by one partner of his interest to his co-partner was ever justly set aside. The defendant's own statement, "I traded with him just as I would in any other trade, in which I considered that each party was to look out for his own interest," is enough to vitiate the transaction, for it is unnecessary to say that he could not deal with his co-partner with such a rule to guide his conduct. The confidential relation is at once destroyed. He trades as a horse jockey, not as a partner, and he cannot retain the fruits of such a trade when the disparity is as fifteen to eighty-five, for, as we have seen, out of the more than one hundred thousand dollars in fees collected on these cases, Cummings received but $15,000 and Baker at least $85,000; indeed, a close estimate makes Baker's share about $89,000.

The Leading Cases upon this Subject Contrasted with the Case at Bar.

Having examined the merits of the case, let us now make a comparison between it and the two leading cases on the subject, that of Maddeford *vs.* Austwick, the English case, 1

Simons, 89, and Brooks *vs.* Martin, the American case, 2 Wallace, 70.

In the case at bar, Baker, as we have seen, gave to Cummings a confused mass of papers and documents from which to form an estimate of the value of the interest he was asked to sell. We have seen that to obtain any information from them was an intricate and difficult matter, to say the least of it. We have seen that Cummings said of them:

"When he gave me the papers to examine I found that it was totally impossible to make an estimate of the amount due," &c.

We have seen that Baker at the time Cummings was examining these papers, and after Cummings had told him "he did not know much about it," "that he hardly knew what to do," &c., had in his possession a "complete and accurate" scheduie of the cases already allowed and appropriated for which showed at almost a glance that the amount offered Cummings for his interest was $744 35 less than he was at that moment entitled to receive of those cases alone, to say nothing of the cases not yet appropriated for; and we have seen that this "complete and accurate" schedule he kept back from Cummings until after he had induced him by great persistency, and, as he, Baker, says, by a threat of dissolution of the partnership, to part with his interest.

Now, let us see how this state of facts compares with Maddeford *vs.* Austwick. Said the court in that case:

The plaintiff seeks to avoid the agreement of 1817 upon the ground of fraudulent misrepresentations by the defendant [just as Cummings on the same ground seeks to avoid the agreement of Sept. 6, 1886]; but there is no *direct* proof of any misrepresentations [but there *is* in the case at bar, for Cummings testifies most positively to it. Maddeford was incompetent to testify at that time on the ground of interest.] It is however to be *inferred* that the defendant Austwick must have stated to the

plaintiff that the terms proposed by him were for a fair consideration. [We have Baker's own admission that he told Cummings that he was paying more than he could afford to pay.] That the proposal for such an agreement originated with the defendant Austwick, is proved by his letter of the 11th of February, 1817. [Baker admits that the offer originated with him and was persistently insisted upon.] That the public books of account belonging to the concern to which all parties had access, were of an *intricate* nature, and required considerable experience and attention to understand and make them out is proved by the bookkeeper, Chase. [Here we have the mass of papers, books and documents, the "intricacy" of which is practically admitted by Baker and positively testified to by Cummings.] That the plaintiff is not conversant with accounts is proved by the same Mr. Chase and also by Mr. Wright. [Cummings knew very little about these cases and could ascertain nothing from these books, papers and documents without the aid of the "link" which was not supplied him as Baker admits.] The particular nature of all these public books has not been explained to the Court, but it is clear they did not contain any statement of an account between the plaintiff and defendant. [It is conceded there was no such statement among the papers handed Cummings.] At the time the agreement was entered into between the plaintiff and the defendant, the defendant had in his possession a private book which did contain a statement of the accounts between the plaintiff and the defendant made out by the defendant. [Baker had the "complete and accurate" schedule, H. M. B., No. 3, made out by him], whereby it appeared that the 1,000 pounds which the defendant agreed to pay to rhe plaintiff in addition to the moneys which he had drawn from the concern would have been nearly but not quite a fair consideration if no profits had been made from the concern of the mint; but that taking the mint profits into the account, which the defendant was unquestionably bound to

divide with the plaintiff, it would be many hundred pounds less than the plaintiff would be entitled to receive. [The schedule, H. M. B., No. 3, showed "by the simple addition of six columns of figures" that Cummings' share of the fees in cases for which drafts had been already issued exceeded by $744.35 what Baker gave for the entire interest, present and future.] The defendant being the partner whose duty it was to keep the accounts of the concern [Baker had charge, as he admits, of the inspector cases] could not, in fairness, deal with the plaintiff for his share of the profits of the concern without putting him into possession of *all* the information which he himself had with respect to the state of the accounts between them. [Baker admits that he did nothing more than give the papers and documents to Cummings, that he never told him what the fees aggregated, that he "distinctly declined to advise him," except to say that "he was paying him more than he could afford to pay."] The defendant knew from the accounts in his possession that the 1,000 pounds was not an adequate consideration for the plaintiff's share of the profits [just as Baker knew from the schedule in his possession that $15,000, or, as he originally offered, $14,000 was an inadequate consideration for Cummings' share of the business; in fact, less than Cummings was entitled to demand of him then and there had he refused to sell out], and he cannot be permitted in a court of equity to maintain an advantage which he has gained over the plaintiff's ignorance [and neither should Baker be permitted by this Court "to maintain an advantage which he has gained" over Cummings' ignorance in regard to the true amount of fees then due him and to become due him].

This case would seem on "all fours" with the case at bar, but it is not more so than the case of Brooks *vs.* Martin, 2 Wall., 70, the opinion in which was delivered by Mr. Justice Miller.

Brooks and Martin were partners who, in June, 1847, had entered into an agreement to buy up the claims of soldiers,

then returning from the Mexican war, to bounty land warrants and scrip before they had been issued by the Government. Of this business the Court said: "We have little doubt that the traffic was illegal." Martin furnished the money and Brooks attended to and had sole charge of the business. Martin lived in New Orleans and Brooks conducted the business partly in Washington and partly in Wisconsin, where the lands were to be located with the scrip. There was a third partner—a Mr. Field—who, however, cut but little figure in the case. We quote from the report of the case:

"In June, 1848, Martin, at the invitation of Brooks, went to Pittsburgh, in Pennsylvania, to meet Brooks, who then and there, on the 29th of June, 1848, bought out his interest in the partnership. Martin at the time had never been in the West and in fact knew little or nothing as to the particulars of what had been done there. There was no evidence, indeed, except the answer of the defendant, which was discredited by the facts, that Martin ever had a remote conception of the condition of the business."

On the other hand, that Brooks "knew the real condition of the concern, and was fully and minutely informed as to every item of its business" was considered by the Court as "beyond dispute." At the time of the "trade" between Martin and Brooks there was to the credit of the concern in "clear cash profits" $15,000 and lands located which the Court estimated as worth about $57,000, a total of $72,000, of which Martin's share, for the partnership by its terms was not an equal one, came to $30,000. The consideration of Brooks' purchase was an *agreement* by him "to pay all the debts of the partnership, about $45,000, and a payment as he alleged, of $3,000 to Martin, though as Martin asserted a payment of about one-half a balance due him on another account, which balance it was evident that Brooks was bound for, Brooks gave no security for the performance of his agreement to pay these debts."

Martin on the 3d of August, 1857, that is to say, a few days

more than *nine* years after the sale, filed his bill—(in the case at bar the bill was filed in a little less than *three* years and four months afterwards). The bill asked that the contract of sale be set aside, and for an account and division of the profits, on the ground of plaintiff's own alleged embarrassed condition at the time of the sale. [Cummings says (p. 21) and Baker does not contradict him: "Mr, Baker knew that I at that time, was in need of considerable money, as I was carrying on some pretty extensive building operations for myself"] his ignorance of the partnership business, fraud on the part of the defendant, Brooks; concealment by Brooks of what he knew; misrepresentation in what he professed to tell, and want of consideration proportioned to the real value of the interest which the complainant had in the concern. The answer admitted the purchase by Brooks, but denied fraud. The court below gave the relief prayed and there was an appeal to the Supreme Court.

The foregoing is a statement of a case which the reporter occupies about four pages in narrating.

After disposing of a preliminary point having no application here, the court said:

"If the parties are to be regarded in this transaction as holding to each no different relations from those *ordinarily* attending buyer and seller; and as, therefore, under no *special* obligation to deal conscientiously by each other, we are satisfied *that no such fraud is proven as would justify a court in setting aside an executed contract.* But there are relations of trust and confidence which any man may occupy towards another, either personally or in regard to the particular property which is the subject of the contract, *which impose upon him a special and peculiar obligation* to deal with the other person towards whom he stands so related *with a candor, a fairness and a refusal to avail himself of any advantage of superior information or other favorable circumstance* not required by courts of justice in the usual business transactions of life. It is contended that the relation of Brooks towards Martin was of this character; and before we can dispose of the question of fraud, it is necessary to determine whether the claim thus set up is well founded; and if it is, what are the principles upon which courts of equity

determine the validity of contracts between parties so situated. It is argued that the partnership existing between the parties constitutes of itself a relation which calls for the application of the principles which we have alluded to; and Judge Story, in recapitulating the confidential relations to which they are appropriate, mentions partner and partner as one of them. It is not necessary to decide here whether, in all cases, a sale by one partner to another of his interest in the partnership concern will be scrutinized with the same closeness which is applied to fiduciary relations generally; for there are special circumstances in this case which bring it clearly within the rules applicable to that class of cases.

"The defendant was not only the partner of plaintiff, but he was his special agent in the management of the business. The bill alleges that he had a power of attorney from plaintiff, authorizing him to represent, on all occasions, the interest of the plaintiff in the conduct of the affairs of the firm, and although this is denied in the answer, *and is not proven*, the answer *does* state that at the time the partnership was formed it was distinctly agreed between plaintiff and defendant that the latter was to have full and exclusive control of the business; and should so far represent the plaintiff as to give defendant a preponderating influence in the management of the partnership over Mr. Field, the third partner."

Just as it was practically agreed between Baker and Cummings, that Baker should manage the inspector cases, which were cases arising out of the revenue, while Cummings managed the war claims department. Then after considering the facts, among others, that Martin was two thousand miles away, and could therefore necessarily have known but little if anything of what was going on, just as in this case, Cummings by reason of the arrangement of the business between himself and Baker, knew little if anything of the inspector cases, and would hardly have known much less of their actual amount and condition had he been two thonsand, or ten thousand, miles away. Mr. Justice Miller proceeds:

"Under these circumstances Brooks must be held to have been not only the partner but the special agent of Martin, and the purchase made by him of Martin's interest must be tested

by the rules which govern such transactions as between principal and agent."

It will thus be seen that we have the authority of this Court for the undoubtedly sound doctrine that where in a partnership the business (and the same must necessarily be true as to a *branch* of the business) is conducted and managed by one of the partners, that partner is the *agent* of his co-partner for the conduct of the business, or of the *branch* of the business, which he is in charge of; and their relation is not only that of partner, but of principal and agent. Certainly so far as these inspector cases were concerned, Baker was not only the partner of Cummings but he was his agent to take care of his interest in those cases, just as Cummings was Baker's agent to take care of his interests in the war claims cases. And so proceeding with his opinion Judge Miller says:

"What are those rules," viz., which govern such a relation? "On the whole, the doctrine may be generally stated, that wherever a confidence is reposed, and one party has it in his power, in a secret manner, for his own advantage, to sacrifice those interests which he is bound to protect, he will not be permitted to hold any such advantage. 1 Story, Eq., § 323. Or, to speak more specifically, if a partner who exclusively superintends the business and accounts of the concern [as Baker did of the inspector cases] by concealment of the true state of the accounts and business, purchase the share of the other partner for an inadequate price, by means of such concealment, the purchase will be held void." Id., § 220.

Then, after citing from Lord Eldon to show that the Court will in such a case make "a jealous and scrupulous examination of all the circumstances," he formulates for the Court this rule:

"We lay down, then, as applicable to the case before us, and to all others of like character, that in order to sustain such a sale, *it must be made to appear*, first, that the price paid approximates reasonably near to a fair and adequate consideration for the thing purchased (and not as in the case at bar $15,000

for $50,000) and, second, that *all* the information in possession of the purchaser, which was necessary to enable the seller to form a sound judgment of the value of what he sold should have been communicated by the former to the latter."

By whom must it be *made* to appear? By the defendant, of course. The burden of proof is upon *him*, not on the plaintiff. All that is necessary for the plaintiff to do is to show that the price did not "approximate reasonably near to a fair and adequate consideration," and thereupon he establishes a case entitling him to have the sale rescinded *unless* the defendant show that all the information in his possession "which was necessary to enable the seller to form a sound judgment of the value of what he sold" had been communicated by him to the latter. Apply this rule to the case at bar, and what do we find? The plaintiff, it must be conceded, has established the inadequacy of the price. The burden of proof then is upon Baker to satisfy the Court that he communicated to Cummings all the information which he, Baker, had which was necessary to enable him, Cummings, to form a sound judgment of the value of what he sold. Has Baker done so? On the contrary, does he not practically admit that he did not give Cummings all the information in his possession? "He asked me for advice, but I distinctly refused to advise him." "He told me he did not know much about it," yet "I kept away from him the very paper (schedule H. M. B., No. 3) which would have immediately informed him." "I did not tell him that I had already collected over $26,000 in fees, half of which was his and that the remaining five or six thousand dollars were already in the shape of drafts and were only awaiting delivery. But I did tell him, although I had in my pocket more than $26,000 of the firm's money and knew that over $5,000 more was over in the Treasury Department ready for delivery, that $15,000 was more than I could afford to pay him, and I knew also when I said this that at that very time I myself had already filed or ready for filing in the departments over $226,000

in cases in which our fees would reach nearly $72,000. Yes, I knew all this, but I never told him the 'aggregate' of them, I merely handed him a confused mass of papers, contracts, documents and Treasury registers, which lacked the 'link necessary to complete the computation,' and keeping back from him the 'complete and accurate' list, told him to find out for himself; and when he came back and told me that he did not know much about it and asked my advice I refused to advise him or tell him the actual facts, because 'we were trading and each must look out for his own interest.'" Can it be doubted how Mr. Justice Miller and his associates who decided Brooks *vs.* Martin, would have decided this case? would decide such a case?

But this is not all of this case of Brooks *vs.* Martin, which needs but little more than a change of names to make it the case of Cummings *vs.* Baker. The Court continues:

"In regard to the adequacy of price, it is obvious that Brooks did not pay Martin anything that he was not bound to pay before the sale was made, or assume any obligation under which he did not already rest. Nor did Martin receive anything which Brooks did not then owe him, or his promise to do anything for which Brooks was not previously bound."

Did Baker pay Cummings anything "that he was not bound to pay before the sale was made." On the contrary, he paid him *less* by $744 than he would at that very moment have been bound to pay him if the sale had not been made. See Helmore *vs.* Smith, *supra.* What *consideration* was there to support this assignment? Was it not clearly (aside from all other questions in the case) the merest *nudum pactum?*

Other Authorities in Point.

A few more authorities in point may not be out of place.

"While it may be true that partners and agents may not be absolutely precluded from dealing with the firm and the principal, yet such dealing is not entirely at arm's length, as may be the case with contracts between strangers. On the contrary the

utmost fairness is required. There should be no *suppressio veri* or *suggestio falsi*. The confidential relations which exists between such parties demands entire good faith and perfect frankness, and when they are absent, the contract should not be upheld; *not so much on account of any actual fraud or injury which may have been committed, but because of opening the doors thereby and thereto.*" Whitman *vs.* Bowden, 27 Shand (So. Ca. 61, citing Pars. Part 223 et seq; Pom. Eq. Jur. 901 et seq. Story's Eq. Jur., 206 et seq.)

In Caldwell *vs.* Davis, 10 Col. 481, Caldwell and Davis were partners jointly interested in an option upon a mine which they were endeavoring to sell. Davis, without the knowledge of Caldwell, had found a probable purchaser in one Ohlwiler, and thereupon, without disclosing the fact to Caldwell, bought his interest in the option for $500, and a horse of the value of $100. Subsequently, July 13, 1880, Ohlwiler purchased the mine under an arrangement with Davis, that he and Ohlwiler should be interested in it, share and share alike. Caldwell filed his bill some *five or six years afterwards*, the exact date is not given, but as the decision was rendered in October term, 1887, it may be presumed that the bill was filed about the latter part of 1885, or early part of 1886. This was *after* the statutory period of limitations would have barred his claim had he known the facts. The Court said: "The question of laches by the plaintiff in bringing his suit was made an issue by the pleadings. * * * The question of laches must be determined upon the knowledge of the plaintiff and his diligence in obtaining knowledge upon which his right to relief rests. There were no such laches on his part as will defeat his right to relief."

Upon the merits of the case, we quote from the opinion of the Court:

"The first and most important question for consideration is that of the sufficiency of the evidence to entitle the appellant to the relief demanded. Appellant bases his right to relief upon the conduct of the appellee; and how far the conduct of the appellee affects such right *must be determined by the relation of*

the parties to each other. The plaintiff alleges that they were co-partners for the purpose of buying and selling an option on certain mining claims. Under the decision in Kayser *vs.* Mangham, 8 Colo., 232, the evidence in this case fully establishes the allegations. The relation existing between partners is one of trust and confidence. Pom. Eq., 963, partners when dealing with each other in relation to partnership matters, are required to make *full disclosure* of all material facts within their knowledge, in any way relating to the partnership affairs. A community of interest exists between the partners and a community of interest produces a community of duty. This community of interest by the terms of the bond and agreement, was to continue until the 22d day of July. The bond having been obtained for the purpose of selling the option so acquired at a profit, for the joint benefit of appellant and appellee, a joint duty and obligation rested upon each, during the full time the bond had to run, to work for the accomplishment of such purposes. We think the evidence clearly shows that appellee did not perform this duty; that prior to appellant's return from the East, appellee had negotiated a sale to Ohlwiler of one-half interest in the property for his own exclusive benefit; that he deliberately planned to obtain appellant's interest in the bond to enable him to carry out his negotiations with Ohlwiler; that he intentionally concealed from appellant all knowledge of his negotiations with Ohlwiler, and he led appellant to believe that he wanted appellant's interest in the bond for the sole purpose of enabling him to put up the money and take the property.

"In Story, Eq., § 329*a*, it is said: 'When the contract is between those who sustain, or have lately sustained, any intimate and confidential relation, the law presumes the existence of that superiority and influence on the one part, and that confidence and dependence on the other, which is the natural result of the relation, and will accordingly decree the cancellation of the contract, unless it appear affirmatively to have been equal and just.' In the making of this contract the parties were not on equal footing. Davis had knowledge of facts relating to the sale of the property which Caldwell did not have, and which knowledge equity and fair dealing required of him to disclose to Caldwell, because such knowledge was obtained under circumstances which made it the common property of himself and Caldwell. The concealment of, or the failure to disclose these facts to Caldwell made Davis guilty of an actual fraud. Pom., Eq. Jur., 901, Story, Eq. Jur., § 308. Dambman *vs.* Schutting, 75 N. Y., 55–61. The contract between Davis and Caldwell was unequal, in that it enabled Davis to obtain all the

benefits, under their joint undertaking, and unjust in that such benefits were so obtained by reason of the the suppression by Davis of facts which it was his duty to disclose.

"In Fitzsimmons *vs.* Joslin, 21 Vt., 129–138, Redfield, J., in commenting upon contracts of this nature, says: 'Can it be said, then, that when one party acts under a misconception of the facts most material to the contract, which are known to the other party and studiously kept back, knowing that the other side is acting under this dilusion, can it be said that such contract is binding at the bar of conscience, or, indeed, in morals?'"

In concluding these comments upon the sufficiency of the evidence, we submit that the Court in forming its judgment should be controlled by the following propositions of law, all of which, we contend, are fairly deducible from the authorities hereinbefore cited:

First. In a purchase by a managing partner, or a partner having more knowledge than the selling partner, of his co-partner's interest, if the price paid does not approximate reasonably near to the value of the thing sold, the burden of proof will be upon the purchaser to show that *all*—not a part—of the information possessed by the purchasing partner was communicated to the selling partner, which was necessary to enable him to form a *sound* judgment of the value of the interest he was selling. The selling partner must not wait to be asked; it is not sufficient that he say say, "There are the papers, examine them, and if there is anything about them you want to know, ask me and I will tell you." He must tell *without waiting to be asked.* He must not only not permit, but he must not, even, though it be without fraudulent intent, permit his partner to sell without having *all* the information that *he* has. It is not sufficient to say that "He did not sell in the dark." He must be able to say, "He sold with as much light on the subject as I had."

Second. The sale will be rescinded if the purchasing partner undertakes to impart such information, and in doing so misleads his partner by word or act, either directly or indirectly

said or done, though in the saying or doing of it he did not *intend* to mislead; it is the *consequence*, not the *intention*, which controls.

Third. In scrutinizing a sale to a partner by his co-partner, the question is not whether actual fraud was committed, but whether the price paid was *approximately adequate* to the value of the interest sold, and whether the selling partner possessed all the information necessary to form a *sound* judgment.

Fourth. In all such cases, viz., where the price paid is inadequate, the Court will search "with lantern in h[illegible]" for a reason to rescind the sale, and the slightest circumstance of unfairness will be sufficient for that purpose; nor will *want of vigilance* on the part of the seller in making the necessary investigation to inform himself of the true value of the thing he is selling *be a defense.* He has a right to rely on the statements of his better informed co-partner; and although he may at the time doubt their entire correctness, he has a right to banish his doubts and to act upon such statements, believing in the integrity of his co-partner until the contrary is forced upon him by subsequently developed facts.

Lastly. The sale must be tested by "The highest standard of honor." If the purchasing partner admits that he negotiated for and consummated the sale upon no higher standard than that which would have controlled him "in an ordinary trade, in which each party looks out for his own interest," he cannot, upon his own admission, maintain the sale.

Alleged Laches.

The only remaining question to be discussed is the effect upon complainant's right to relief of his alleged laches.

We have already seen from the opinion of Chief Justice Alvey (Rec. 219) that the assignment in this case being void from the beginning, the partnership business is to be regarded as continuing with the same effect as if the assignment

had never been made, until the final dissolution in September, 1889. As the bill was filed within a few months of their dissolution (February 1st, 1890), the doctrine of laches has no application for the statute of limitations would only run from the date of the dissolution. To that effect are all the authorities:

"Upon the principle that laches or lapse of time which will bar relief in equity will be measured by the analogies under the statute in similar cases at law, the courts have generally held that the time prescribed in the statute of limitations for an action of account at law will bar the right to an accounting in equity. But even should we consider the date from which we are to be charged as that of the assignment, viz., September 6, 1886, yet the statute of limitations would have no application. *As no right to demand an account exists until dissolution, the statute has been held to begin to run from that time.*" Am. Cyl. tit., Partnership 1282, And in support of this proposition are cited:

Haynes *vs.* Short, 88 Ala., 562.
Horne *vs.* Ingraham, 125 Ill., 198.
Pierce *vs.* McLellan, 93 Ill., 245.
McKaig *vs.* Hebt, 42 Md., 227.
McKelvey's Appeal, 72 Pa. St., 409.
Allen *vs.* Woonsocket Co., 11 R. I., 288.
Hewit *vs.* Lewis, 4 Mackey, 10.

"So long," says Lindley, "as a partnership is existing, and each partner is exercising his rights, and enjoying his own property, the statute, it is conceived, has no application at all, but as soon as a partnership is dissolved, or there is any exclusion of one partner by the other, * * * the statute begins to run." 2 Lindley on Partn., 1024.

But leaving out of the case entirely the contention that the assignment is void *ab initio* and that, therefore, limitations would run only from the dissolution of the partnership we still have the case of an assignment alleged to have been obtained by fraud only recently discovered. To such a case whether *laches* are to be imputed depend upon the circumstances of the case. What will constitute laches in one case will not in another. Each case, say the books, must rest on its own peculiar circumstances.

We have therefore to consider the circumstances of the case at bar. The bill was filed three years and four months, lacking a few days, after the assignment of the 6th of September, 1886. The defendant relies upon the failure of the plaintiff to file his bill four months sooner than he did.

In the case of Brooks *vs.* Martin, heretofore referred to, the Court found that a delay of a little over *nine years* was not too long a time. It was "apparently so soon as Martin had examined into the facts of the case." And in Chouteau *vs.* Barlow, 110 U. S. 238, a firm formed in 1842, dissolved in 1852, and a bill for an accounting filed in 1876, was held under the circumstances not to be barred by laches.

So, in Kilbourn *vs.* Sunderland, 130 U. S. 505, a partnership case which went up from this Court, the bill was filed June 9, 1881, *nine* years after the event happened, in respect of which an account was asked. The Court, Fuller, J., said:

"In answer to the defense of laches and limitations, the complainants contend that the alleged bad faith of defendants was not discovered by them until a short time before the bill was filed, and that they had no intelligible information of the excess in charges for care and management until late in June, 1878. Reasonable diligence is, of course, essential to invoking the activity of the Court, but what constitutes such diligence depends upon the facts of the particular cases. Where a party by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon discovery, and mere submission to an injury after the inflicting it is completed, cannot generally, and in the absence of other circumstances, take away a right of action unless such acquiescence continues for the period limited by the statute for the enforcement of such right. De Bussche *vs.* Alt, 8 Ch. D., 286, 314. We hold that the complainants moved with sufficient promptness upon discovering the fraud, *and that although, reposing confidence in their agents, they may have neglected availing themselves of some source of knowledge they might have sought, the defendants cannot be allowed to say that complainants ought to have suspected them, and are chargeable by what they might have found out upon inquiry aroused by such suspicion.*"

Indeed it must be a most remarkable and inexcusable case of laches, and dependent upon very peculiar circumstances, where a court will declare that a delay of less than four months after the statutory period of limitations will bar relief against an inequitable contract between a managing partner and his co-partner, when the latter's ignorance has been imposed upon. But there have been no laches of any sort in the case at bar, the bill was filed within ample time after the plaintiff had, as in Brooks *vs.* Martin, "examined into the facts of the case."

Counsel for defendant claims that Mr. Cummings, if he had been cheated, could have discovered the fact almost immediately afterwards by an examination of the schedule Exhibit H. M. B., No. 3, containing the list of adjudicated cases, which It will be remembered, was placed in his hands by Baker the day after the sale. Cummings says of this, that pending the assignment:

"I asked Mr. Baker how many fees there were that were due us in cases that had been adjudicated, and for which appropriation had been made, and which were then in the process of collection, and he said about $20,000, or not more than $22,000. I was somewhat surprised at that, and I so expressed my surprise to him; he said that our fees in some of those cases were not so much as usual; some only about 10, 15, or 20 per cent. But I will say here that I had never seen the list of cases (Ex. H. M. B., No. 3) with the amount of fees that had been adjudicated in 1886, for which an appropriation had been made by Congress and rulings had been made in the Treasury until *after* I had made an assignment to him. I simply took his word for it." (Rec. 21, near bottom of page.)

Then on page 23 he says:

"The amount of claims that had been adjudicated and which were in process of collection I discovered of course within a day or two after Mr. Baker had delivered me the schedules and I continued the collections, because these schedules contained the name, the amount, the fee and all the data pertaining to each case, and it was hard for me to reconcile the amount of fees that he said and the amount of fees that were on the

schedule; and I know often we had to pay out a large amount of our fees to other attorneys, as I frequently had paid one-half of a fee to a local attorney to work up the evidence; and I had supposed the great diminution of these fees from what I supposed, viz., $32,000, in the vicinity of $30,000, was owing to the division with other lawyers."

That it was this statement of Baker's which misled Cummings at first, viz., that although there were apparently more than $20,000 or $22,000 in fees in the adjudicated cases, yet as a great deal had to be paid to other attorneys, there was really not more than that amount, is plain from his letter to Baker, written on the 23d of August, 1889, when his suspicions had become aroused by the subsequently large appropriations. In his letter he says:

"This whole difference between us can be settled in a moment if you will only show me the list of cases and of fees that were received in 1886; you say that there was only $20,000 to $22,000 of fees; I say that there were from $32,000 to $34,000 of fees. What did you do with the other $12,000 or $14,000? *Did you pay it out to any person?* I don't care to whom, or for what did you pay it; *did you pay it out* to any person, I don't care to whom or for what did you pay it, *did you pay it out?* and will you give me your word that you did pay them out?" "I received a letter from him dated August 24th," "It is none of your business; I bought you out of these claims, horse, foot, dragoons and all." (Rec. 25, near bottom of page.)

How it begun to dawn upon Cummings that he had been overreached is explained best in his own words:

"Mr. Baker when I made the assignment said that there were $75,000 or $80,000 of cases, unadjudicated. Under Congress of 1886-'87, Mr. Baker had had allowed about $75,000, or in that vicinity, of inspector cases and which went to Congress for appropriation; that Congress made no appropriation for the the deficiency bill and it failed. I thought then Mr. Baker was pretty near correct in his estimate $75,000 to $80,000, that was what he told me there was of additional cases and that is the amount that was sent up for appropriation, I, supposing that that was all the cases there were, and he had no further cases

adjudicated that I knew of in the year 1887; in the winter of 1887-'88, Congress made an appropriation to cover the $75.000 or $80,000 of cases that had been sent up to the previous Congress and which remained unappropriated for; when they were allowed, I helped Mr. Baker, aided him as much as usual, in fact I gave him as much aid, or perhaps more, in collecting this lot of cases in January or February, 1888, as I ever had in collecting any of the others. To my astonishment, late in the Spring of 1888, Mr. Baker had another lot of cases sent up amounting to about $70,000 or $75,000 worth of cases. Then I began to think could it be that Mr. Baker could have been so mistaken as to get out only one-half of the cases. Along in August, to my astonishment, there was another lot of about $60,000 or $70.000 worth of cases allowed, making something over $200,000 worth of cases while I had supposed there was $80,000." * * * "It was when I saw, in 1888, this large amount of cases allowed, where I had supposed there were only $80,000, according to Mr. Baker's statement, *that it set me to thinking*. I then began to investigate the question of the fees of 1886, the first lot of cases.*

Q. That is that lot of cases in which he stated that the fees were from $20,000 to $22,000?

A. Yes, and I was convinced that the fees that were due and had been earned and paid in September and October, 1886, instead of being $20,000 or $22,000, were really from $32,000 to $34,000, one-half of which were mine at the time when I made the assignment." (Rec. 24.)

Again, on page 26:

Q. Now it is alleged in the answer of Mr. Baker—Mr. Baker

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*The first appropriation made by Congress after September 6, 1886, the date of the assignment, was that of February 1, 1888. The following table shows the date and amount of each appropriation referred to by Cummings in his testimony, and also the volume and page of the Statutes at Large where they will be found:

February 1, 1888, 25 Sts. L., p. 28		$ 73,226.76
March 3, 1888, 25 Sts. L., pp. 65 and 70	$62,661.37, $46,024.09,	$108,685.46
October 19, 1888, 25 Sts. L., p. 598,		$110,636.64
Total		$292,548.86

Nearly all of these were allowances made by the Treasury Department on cases *filed* by Baker, and ready for settlement *before* September 6, 1886. The above list does not, of course, include the appropriation made in July, 1886, of about $134,000, nearly every dollar of which had been collected by Baker at the time of the assignment, and which has been so often referred to in the testimony and this brief.

states in his answer, that having full knowledge of all the facts necessary to "attack said sale as void, you allowed three years or more to elapse without making complaint." You may state why you made no complaint sooner than that?

A. It was impossible to tell whether I had been deceived or not in regard to the number of claims until the claims had been allowed and paid; there was no payment of claims *for one year and four months* after the date of the assignment, and it was not *until the summer or spring of 1888* that I was aware or could be aware that any more than $75,000 or $80,000 of claims were still to be prosecuted; and it was not *until the fall of 1888* that I knew that the amount of claims was so much in excess of what Mr. Baker told me.

Time and again the defendant's counsel returns to the attack with the purpose of showing that the plaintiff should have known all these facts when he made the assignment. It would take up too much space to quote from it here, but the court will find in the cross-examination of the plaintiff in rebuttal, some of these efforts of defendant's counsel in that direction. Finally the plaintiff is given the opportunity to summarize his testimony upon this subject, and he says (Rec. 153):

"When the first appropriation [by Congress] was made in 1888 (as no appropriations were made between 1886 and 1888), the appropriation was about $75,000. I said to myself, 'Mr. Baker is pretty near right.' In a short time, or in the course of two or three months, another appropriation was made of a good size, but yet an appropriation of such a size that I said to myself, 'Well, Baker has done better than I thought,' for it was an appropriation that brought the fees up to more than I expected, but not to such an amount as I would kick upon it. In October, 1888, a still larger one was made, somewhere in the vicinity of $110,000, and that surprised me. Immediately after that, or at least during the winter of 1888 and 1889, I went into the Treasury, and as I said I did, got a list of these cases where powers of attorney had been given to Mr. Baker; I took them off. I then took the executive documents, and I made out another list in which would be brought down the amounts and I added these amounts up. It was not until probably along in the early part of the summer or late in the spring of 1889 that I was convinced."

On cross-examination he is asked (Rec. 153, bottom of page):

Q. Then when you made up your mind that you had been intentionally wronged, it corresponded then precisely with your "thoughts and meditations," did it not?

A. No, sir.

Q. What was the difference between what you suspected in your thoughts and meditations; what was the difference in fact in your mind as reduced to writing and the facts that you discovered in 1888?

A. The difference was the same that would be between a peanut stand and a grocery store. My supposition was, at least, that the claims might run over one hundred to one hundred and twenty-five thousand dollars, instead of seventy-five thousand, but I had no idea, until after the appropriation in October, 1888, that there was any such amount.

Q. Then the fact is simply this: as time wore along and you carried this sale in your mind, you reached the conclusion that you had made a bad bargain, and you desired Mr. Baker to make some remuneration for that purchase?

A. Well, I came to the conclusion after these appropriations had been made *that I had been deceived terribly* in the amount of *future* business, and the only question that arose in my mind was, did Mr. Baker know of this amount of future business at the time when he made the sale.

Mr. Cummings, it will be remembered, has already told us that from the schedule, H. M. B., No. 3, placed in his hands the day after the sale, he had before him the fact that about $32,000 in fees had been earned from the appropriations of 1886, provided those fees were twenty-five per cent. of the gross amount; but, he says, he reconciled that fact with the statement of Mr. Baker that they were entitled to only $20,000 or $22,000 of fees in those cases, upon the latter's explanation that the fees in some of the cases were only ten, fifteen or twenty per cent., the difference going to "local attorneys," viz., attorneys who had sent them the cases. And, he says, while it surprised him that there should be so much as that, still, what was disturbing him was not the fear that any great mistake had been made as to the cases of 1886, but that, *perhaps*, Mr. Baker

had underestimated what he calls the "future business," viz., the amount of cases from which fees were to be derived from future allowances and appropriations. Thus, at page 140, he says, upon cross-examination:

Q. Now, tell us, if you please, why it was that with that paper [H. M. B., No. 3,] and with the blank checks in your possession signed by him, and with the bank book in your possession, and the checks in your possession for his purchase from you of your interest in these claims—of fifteen thousand dollars—why it was that you sat down and wrote what you call your "Thoughts and Meditations," with all this information in your possession and not calling his attention to what you thought was a misrepresentation of things?

A. Simply because the idea that he had misrepresented the fees in the cases—say, in 1886—never came into my mind, but I did have some doubts, if I may so call it that, about the number of cases that could come in *thereafter;* my doubt was as to the *future* cases; he said eighty thousand, and I thought that, perhaps, there ought to be more; but Mr. Baker knew all about it; I knew nothing.

Q. But you had, as I understand you, every fact in your possession at the time you penned your "thoughts and meditations"?

A. No, sir; I did not.

Q. Well, how long after the 6th of September was it after (sic) you wrote those thoughts and meditations?"

A. Within a few days.

Q. Then you did have in your possession the evidence that you have testified to, to wit, Exhibit H. M. B., No. 3, and the Congressional documents, the checks by Mr. Baker, signed in blank, and the checks for fifteen thousand dollars for the purchase of your interest at the time?

A. I did.

Q. Then I want to know why it was that when Mr. Baker came in you did not at once speak to him about this transaction as being unfair?

A. Simply because there was no idea in my mind of *unfairness* as regards the fees of 1886, and in regard to the prospective business, I took Mr. Baker's word, *and time would only develop* as to whether he was right or whether he was wrong.

Q. Well, why was it that you could entertain such thoughts and put them upon paper three days after you made this sale to him with all the evidence that went to make up this sale in

your possession, and not call his attention to any misgiving when you first saw him?

A. *All* that I had in my possession at the time, or had seen at the time, was simply the schedule of cases *that had been* paid, and Mr. Baker's check book.

Mr. Johnson: That does not answer my question. The examiner will please read it.

Q. (Question read.)

A. Simply because I did not have all the evidence that went to make up the sale; I had only the evidence of the amount of claims that were *being paid in 1886*, but I had no evidence whatever of the claims *in futuro*.

Q. But you had a misgiving, or otherwise you would not have reduced it to writing.

A. That does not follow at all.

Q. Would you reduce thoughts to writing that you knew had no foundation in fact touching the integrity of your partner?

A. I would for the very reason that I had fears that the cases *in futuro* were more than Mr. Baker had represented.

Q. Then having reduced these fears and suppositions to writing, three days after the consummation of the sale,* and with all the evidence that advised you at the time as to the condition of the cases which you sold, why was it, when you saw Mr. Baker again, you didn't tell him of the misgiving that you had in that transaction, but waited for three years before you divulged the fact to him?

A. Simply because my fears had nothing to do with the case, they were then being paid or had been paid, but as to the amount of *future* business, and *that* Mr. Baker had stated at a certain amount, for I had asked him; when he came home he would have given me the same answer, and time would only tell, by the decision and payment of these cases, as to whether he was right or wrong.

Q. Why did you wait three years before you opened this subject to him?

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*It is evident from the questions of the learned counsel for the defense, that he is under a misapprehension in regard to the time when these "Thoughts and Meditations" were *first* reduced to writing. The paper itself, although presented as a whole, shows on its face that it was written at differeut times, mostly on the very day of the occurrences narrated, except where it is clearly a narration of past events. The writer puts his verbs in the present tense, and speaks of things as happening just about or shortly before the moment of writing, and the matters he is making a record of occurred at, or shortly before the time of the assignment. A few days after the assignment these "thoughts" were then put in writing as an entire paper, the same language being retained. The latter portion only of this paper was composed *after* the assignment. The defendant's counsel, however, seems to suppose that the whole paper was first written *after* the assignment was made.

A. Because I had no facts to go on prior to that time.

Q. Haven't you testified that you obtained this information at the next appropriation by Congress?

A. No, sir; I did not.

Q. Haven't you testified that you obtained the facts that led you to believe that everything was not fair in 1888?

A. Yes, sir; late in the fall of 1888.

Q. Why did you not then speak to him about it the moment you ascertained the facts which gave grounds to your suppositions in your "thoughts and meditations?"

A. Simply because I wanted to see what the whole amount was—how many were coming in. As I recollect, the first appropriation in the spring of 1888 was somewheres about seventy-five thousand dollars, and my first impression was; well, Baker was pretty near right; he said seventy-five to eighty thousand and he struck it pretty near right; in a few months another appropriation was made, and then I thought well, this exceeds what Baker said; there came another appropriation along in October, 1888, for much more, and then it was that my suspicions began to be aroused.

Q. I want to know—You gathered together all these facts which you say finally warranted you in what you asserted in your paper, and waited for a lapse of time which the statute of limitations would bar, before you spoke to him about it?

A. I did not wait any great length of time *after I had discovered the real standing of these cases.*

As we have in the presentation of this case preferred to quote from the defendant's own testimony, so when necessary to quote from the plaintiff's testimony, we prefer to take his cross-examination, because there, if any where, is the story to be weakened if it be false. The foregoing extract needs no apology for its length. The *truth* is what is being sought by the court, and the purpose of this brief is to present it in all the fullness which may be attained within reasonable limits.

So then, if in a purchase by a managing partner from his co-partner, without equal knowledge, of the latter's interest in the firm the selling partner has a right to rely upon the knowledge of the purchasing partner, to confide in his statements and act upon them, to proceed upon the theory that his partner is correct, until subsequently developed facts prove him to be incor-

rect, to refuse to play the part of a mousing detective; but, on the contrary, to turn a deaf ear to suspicion and to go to sleep in his overconfidence, until against every effort to resist the impression he is forced by the slowly developing facts to doubt and, finally, discredit the man towards whom the law says he was justified in extending the most unlimited confidence. If the law justifies and sustains (as it undoubtedly does) a selling partner in trusting to the utmost limits the statements of the purchasing partner, when the latter possesses, or claims to possess, the facts upon which the sale is made, and the former is ignorant of them, then no laches—not the slightest, are chargeable to the plaintiff in this case. He did all that any partner could be expected to do. He waited, as he had a right to wait, until the happening of the only event by which the correctness or incorrectness of his partner's estimate of the *future* business could be established. Not waiting with the suspicion lurking in his heart that his partner was a cheat, but waiting to find out how near to, or far from, the true figures his partner's estimate varied. He believed that they had been underestimated, not *mala fide* but *bona fide*. He believed that instead of $75,000 the amount would *perhaps* reach $100,000 or $125,000, and if that had been the extent of the *error*, as he would have then called it, this suit would never have been brought, but when he discovered, by the appropriations made, that instead of $75,000, they exceeded $280,000, he was justified in saying that there had been either a terrible mistake or, as Cumming's himself calls it, "a terrible deception." Even then he hoped that Baker would right the wrong. He was averse to bringing the matter into the courts except as a last resort. He proposed arbitrat.on; argued and corresponded with him about it, and only when all else failed, filed his bill in a court of conscience.

But it has been charged by the defendant's counsel that this suit would never have been brought had Baker not filed his suit at law. Even if that were true we do not see how that fact

can constitute a defense, for the camel may bear the wrong of overweight up to the last feather, and so a man may submit to be wronged up to a certain exasperating point and then rise up in his wrath. But in the case at bar the Court will not fail to observe that for several months before this litigation was determined upon it was made plain to Cummings that Baker intended to institute his suit at law. Was it bad practice—as a lawyer—to wait a short time until that suit was begun and then file his bill to enjoin it, to set aside the sale, and for an account? Many good practitioners would have advised such a course as the best practice, and it was the course pursued by Cummings, for on the 14th of October, 1889, a short time prior to the commencement of this litigation, we find him writing to the defendant: "I shall be ready to accept service at any time. but would rather you would *begin* the fight." Plainly he had determined upon suit, but knowing the defendant was sure to sue, he adopted this as the best practice.

But even if there were laches, that is to say, delay in the bringing of this suit, even if we concede that three years and four months is an unreasonable delay, although the Supreme Court did not think *nine* years too great delay in Brooks *vs.* Martin, nor the same period in Kilburn *vs.* Sunderland, yet *delay of itself* is not a ground for refusing relief. There must be something *more.* The defendant must show that by reason of the delay, he is either not able to produce his proofs to the same extent that he would have been able to do at an earlier date, or that there has been such a change in the situation of the property sued for that it would now be inequitable to require him to surrender it; as if, for illustration, it were real estate, and he had made extensive improvements or something of that sort. There is not the slightest hint that anything of this sort has occurred. The proof, so far as it relates to the amount of the business is entirely *documentary*, and the only two witnesses as to the conversations had, it is conceded, are the plaintiff and defendant. There being therefore no loss of evi-

dence and no change in the situation; how paltry must appear the plea that the defendant should be allowed to keep the plaintiff's money, because he has not asked for it sooner.

"The death of witnesses and loss of evidence and destruction of books are important elements in determining whether lapse of time constitute laches." Bates on Partnership, 952 Am. and Eng. Ency. til., Partnership, 1283.

"Under peculiar circumstances, however, excusing or justifying the delay courts of equity will not refuse their aid in furtherance of the rights of the party; since in such cases there is no pretence to insist upon laches or negligence as a ground for dismissing the suit." 1 Story, Eq. Jur., § 259.

"Although limitations may be relied on as a general rule, it is subject to exception; and while a court of chancery respects the general rule, it must in the exercise of its discretion, regard the peculiar circumstances of every case." Medford's Eq. Pl., 318.

"But as pleas of the statute are admitted in courts of equity by analogy only, it follows that when the circumstances of the case are such as to make it against conscience to apply the rule founded upon analogy, the Court will not enforce it." Collyer on Partn., § 375.

In Neblett *vs.* MacFarland, 92 U. S., 101–105, the Court said:

"The party defending is not bound to rescind until the lapse of a reasonable time after discovering the fraud. * * * Parties engaged in a fraudulent attempt to obtain a neighbor's property are not the objects of the special solicitude of the courts."

"If a party has a clear right in equity with no remedy at law, if it appears that no unconscionable result will follow relief, mere delay in bringing his action will not cause a court of equity to refuse it." Spurlock *vs.* Sproule, 72 Mo., 503.

"Length of time *alone* is not evidence of staleness." Paschell *vs.* Hinderer, 28 Ohio St., 568–580.

"Courts in some cases have, notwithstanding great delay, inquired into the equities between the parties, and, where it is apparent that justice could be done, have given relief." Am. Cyl., and tit. Laches, p. 541.

"When the delay has worked a wrong to the adverse party, who has thereby been induced to do something, or to abstain from doing something, the plaintiff is usually deemed to have precluded himself from relief, and it has been held that *so long as the relative position of the parties is not altered* to the *defendant's prejudice, delay* is of very little consequence." Am. Cyl. L. tit. Laches, p. 454, citing Nadd *vs.* Powers, 136 Mass., 273; Daggers *vs.* Van Dyke, 37 M J., Eq. 130; Platt *vs.* Platt, 58 N. Y., 646; Wollaston *vs.* Tribe, L. R. 9, Eq. 44–50; *ex parte* Adamson, L. R. 8 Ch. Div. 807–817; Ridgeway *vs.* Newstend, 3 De G. F. and J., 474–485; Lindsay Petr. Co. *vs.* Hurd, L. R., 5 P. C., 221; King *vs.* Anderson, 1 R., 8 Eq., 625.

In Wollaston *vs.* Tribe, L. R., 9 Eq., 44–50, a bill was brought in 1868, to set aside a marriage settlement executed in 1858, on the ground of fraud and mistake. LORD ROMILLY, N. R., said:

"Great stress was laid on the lapse of time; but I think nothing of that, because all the persons interested are in the same state now as they were then. If there had been any dealing with an altered state of matters, that might have raised a question, but there is nothing of that sort."

In ex parte Adamson JAMES, L. J., 807, 817, said:

"Nobody ought to be estopped from averring the truth or asserting a just demand, unless by his acts or words, or neglect his now averring the truth, or asserting the demand, would work some wrong to some other person who has been induced to do something or to abstain from doing something, by reason of what he has said or done."

Where a delay of thirteen years had occurred, but the evidence in support of the claim was *entirely documentary*, and there had been no *change* in the situation of the parties, it was held that mere lapse of time was no bar. Cranmer *vs.* McSwords, 24 W. Va., 594, 601.

A lapse of time imputed as laches may be excused by the obscurity of the transaction, whereby the plaintiff was disabled from obtaining full information of his rights. Murray *vs.* Palmer, 2 Sch. and Lef., 474, 487.

Lapse of time will not prejudice a person who has title while seeking a discovery of that title from persons who have possessed themselves of the evidences of it. Bond *vs.* Hopkins, 1 Sch. and Lef., 413.

In Daggers *vs.* Van Dyke, 37 N. J., Eq. 130, which was a suit brought to reform a deed, the Court said:

"The delay of the complainant in seeking redress constitutes no defense. It is only when the complainant has slept over his wrongs so long that great and serious wrong will be done to the defendant, that laches constitutes a complete defense. Here the parties are in almost exactly the same position that they were in at the time the wrong for which redress is sought was done, and relief may be given to the complainant without doing any harm whatever to the defendant."

In Loring *vs.* Palmer, 118 U. S. 321, a partnership case, one of the partners was led by the misrepresentations of the other to believe that he owed him a balance in respect of the venture, and on that account delayed from 1868 to 1875, enforcing his interest therein. In point of fact, so far from owing anything, the other was his debtor. It was held that as his delay was caused by his belief that he owed his partner money, which belief was induced by the latter's misstatements, no advantage could be taken of the delay in order to bar an action.

"Delay in filing a bill may be explained by negotiations which have taken place between the parties with a view to a compromise, and it would appear that the plaintiff may explain his delay by showing that it was consumed in repeated efforts to obtain a remedy from the defendant without litigation. Am. Cyl. til. Laches. 561."

Where the object of the suit is property which fluctuates in value, as mining property, the plaintiff of course cannot lie by

and wait until the property rises in value before bringing his suit to set aside the sale. Said Miller, J., in Twin Lick Oil Co., *vs.* Marbury, 91 U. S. 587.

"While a much longer time might be allowed to assert this right in regard to real estate, whose value is fixed, on which no outlay is made for improvement, and but little change in value, [all of which elements exist in the case at bar] the class of property here considered, subject to the most rapid, frequent and violent fluctuations of anything known as property, requires prompt action in all who hold an option, whether they will risk its shares or stand clear of them."

"As the courts have never prescribed any specific period as applicable to every case like the statute of limitations, the determination as to what constitutes a reasonable time in any particular case must be arrived at by a consideration of all its elements which affect that question." Twin Lick Oil Co. *vs.* Marbury, 91 U. S., 487.

We submit, therefore, that the bill was filed within ample time after the discovery of the wrong done. Baker knew that he had done the wrong, knew it from the day of the sale. From that date he knew, as a lawyer, that Cummings was *equitably* interested in the inspector cases, notwithstanding the alleged assignment. He knew that if Cummings should discover it, there would, in all probability, be a calling to an account. In such a case the Supreme Court has decided that laches cannot be pleaded as a defense. In Insurance Co. *vs.* Eldridge, 102 U. S., 546, it was held that when the defendant has knowledge of the equities of the complainant, he cannot plead laches as a bar to the suit.

The Auditor's Report.

The last question is as to the correctness of the Auditor's report, which report, it is to be observed, confirms in every particular Cummings' testimony in the case in chief as to the amount of fees already collected by Baker at the time of the assignment and the amount collected by him afterwards.

The decree (Rec. 201) under which the auditor's account was stated is as follows:

"This cause coming on to be heard upon the bill, answer and testimony, and being argued by counsel, upon consideration thereof the Court doth, this 16th day of March, 1894, adjudge, order and decree as follows:

1. That the agreement and receipt dated the 6th day of September, 1886, in the bill and proceedings mentioned be, and the same is hereby, cancelled and annulled.

2. That the plaintiff is entitled to an accounting by the defendant of the fees received from all the so-called inspector cases embraced in and covered by said receipt and agreement, said accounting not to include fees for business received by the defendant after the dissolution.

3. That there be also an accounting of and concerning all the other partnership matters (other than the said inspector cases not embraced in the said receipt and agreement); and in stating the account the defendant is to be allowed one-half of all the fees and commissions which the plaintiff received or reasonably should have received by reason of the assignment to H. G. Cooke & Co.

4. That this cause be referred to the auditor to take and settle the aforesaid partnership accounts, and in the execution of this reference he shall consider the evidence already in the case and such other evidence offered by either party which the auditor may deem relevant and pertinent.

5. That the auditor shall give due notice of the time and place of executing this reference and shall report his proceedings under this decree to the Court for its action.

It is further ordered and decreed, that in stating the account of fees there shall be deducted from the amount received by each party such sums as were properly paid by such party to other attorneys, together with such other proper expenses as may have been incurred by the parties respectively in the conduct of the partnership business; and in stating such accounts the auditor shall compute interest upon the respective balances from the date of dissolution of the partnership."

I.

In the execution of this reference the defendant (appellant) was called upon to produce a statement of the fees collected by him prior to the dissolution of the partnership, to wit:—September 1st, 1889.

The statement was accordingly produced (Rec. 259), and it more than corroborates the plaintiff's charge as to the amount of the fees received by the defendant of the so called inspector cases. He, the appellant, there states it at $104,997.67, one-half of which, $52,498.83, would have been the share of the plaintiff. It also appears that of this amount $32,977.51 had at the time of the sale been already allowed and (or within a few hundred dollars thereof) been collected by the appellant. So that the evidence before the auditor establishes of itself our assertion that at the time of the alleged assignment the very money ($15,000), which was paid over to Cummings by Baker as a consideration therefor, was considerably less than what would have been Cummings' own share of the fees already collected had no assignment been made.

Notwithstanding so plain a case of outrageous overreaching, the defendant insisted before the auditor and, although overruled both by him and the court below, continues to insist before this Court, that there was by reason of said assignment (obtained as this Court has declared not only by misrepresentation of the known facts but without consideration) a *de facto* if not a *de jure* dissolution of the partnership in consequence of which he is entitled, he says, to charge the plaintiff $42,700 for the collection of $35,588.51 of plaintiff's share of fees accruing after the alleged assignment! The monumental audacity of such a claim is on a par with the position taken by the defendant throughout this entire case.

The language of the Auditor in respect of this claim for "extra services" is as follows (Rec. 223):

"Cases are cited in which extra compensation has been allowed by courts to a surviving or remaining partner for services rendered in continuing and conducting the partnership business after the death or withdrawal of his co-partner, but each of these cases is that of an *absolute* dissolution of the partnership relation. In this case, in my judgment, the decree of the court annulling the assignment or sale has the effect of reinstating the partnership as it existed prior to that sale, as

to the inspector cases, and to continue that partnership until the complete or general dissolution in September, 1889. In this view of the case we must treat this claim of the defendant as that of one member of an active existing partnership for an extra share of the profits realized from the joint business, on the ground of contributing to that business a greater amount of time and service than his co-partner, ***a claim which cannot be maintained under any authority of text writers or adjudged cases, so far as my inquiry extends.***"

The case of Denver *vs.* Roane, 99 U. S. 355, is directly in point in respect of tnis claim for "extra services." That was, as in the case at bar, a bill for an account between two attorneys, who had been partners. A claim was made by one of them for extra services on the ground that he had contributed more labor to the firm's business than his co-partner; but the court held that a partner could not without ***an express stipulation*** to that effect recover extra compensation. That his entire services were due the firm without charge therefor.

But even if it were the law to allow a partner extra compensation because he had done more work than his co-partner, nevertheless, Baker could make no claim of the sort for three reasons; First: Because it was well understood and agreed between the two partners that the business of the office should be divided, Baker taking what was called the "revenue cases," in which category fell the so-called inspector cases, and Cummings taking the war claims. Cummings says that Baker "had exclusive and entire charge of all these [inspector] cases." This is not denied by Baker, indeed he says, "He [Cummings] generally took charge of what was known as the old war claims, and I had *everything* arising out of the revenue laws."

The business being thus divided, it was Baker's duty to give his entire attention to these cases, while Cummings attended to the "war claims," and neither would be justified in complaining of the other because more labor was given in their respectively assigned departments than to those outside of them.

Secondly. It is not a fact that the prosecution of these inspector cases involved any great amount of labor, for after the decisions in Adams *vs.* U. S. 20 Ct. of Claims Reps. 115, the prosecution of the cases consisted of but little more than the filing of a letter in each case and receipting for the amount payable.

Thirdly. Because Baker practically concedes that he did no more work in these cases *after* the so-called assignment than he did before.

"Question. Did you, as a matter of fact, do any more work in these cases after the 6th of September, 1886, than you would have done if the paper of that date had not been signed by Mr. Cummings?

Answer. It is impossible to answer that question directly for the reason that if the sale had not been made the firm would have been dissolved and each would have managed whatever business he had or could procure.

Q You have testified as a matter of fact, that you did all of the work in these inspector cases, have you not?

A. I have.

Q. Before the assignment?

A. Before the assignment, and I did it afterwards.

Q. And did no more afterwards than you did before?

A. I have not said so.

Q. I ask you as a matter of fact.

A. I think I did more because there was a greater number of cases on hand.

Q. If you did nearly all the work before September 6, 1886, in these cases, what more could you have done after the assignment, after that date?

A. I think that is evident if there were more cases.

Q. There were more cases, but in each of the cases did you do any more work?

A. Some cases required more work than others, and there would be no way that could be ascertained except by taking up each specific case and comparing them.

Q. Did you do any more work upon that class of cases after that date, the 6th of September, 1886, than you had been doing upon the same class of cases before that date?

A. I could not say positively whether I had worked fifteen minutes per day more or less on one side or the other.

Q. Did you do any more work in proportion to the work Mr. Cummings did?

A. I think I did. Mr. Cummings very seldom did any work in the last three or four years.

Q. Did he do any more work before the assignment than he did afterwards?

A. I think he did. His work diminished from the time we entered into the partnership until the end of it.

Q. But you concede that you did nearly all the work in these cases and continued to do all after the assignment?

A. *Substantially.* (Rec. 239.)"

At p. 250 of the Record, Mr. Cummings says that he did, if anything, more work for Baker on the inspector cases after the assignment than he did before, for the reason that Baker was absent from the city to a greater extent than ever, and that he, Cummings, "did all the work I [he] was asked to do or was called on to do."

II.

The defendant claims in his brief that after the assignment he not only continued the business then on hand, but obtained new and lucrative business, viz., inspector cases to the amount of some $65,000.

It is submitted that there is no proof whatever that these cases were obtained after the assignment of September 6, 1886, other than Mr. Baker's own statement, but if it were true that these cases came into the office after that date, they came to the firm of Cummings & Baker, and Mr. Baker has no more right to claim credit for them on that score than has Mr. Cummings.

III.

The defendant objects to the allowance of interest on the amount found due by the Auditor on the ground that it is an allowance "of interest upon interest."

By the report of the Auditor it will be seen that he finds the defendant (after allowing him one-half the fees from the Cooke assignment, which had not then been earned) to have been indebted $27,916 to the plaintiff on the 1st of September, 1889,

(the date of the dissolution of the partnership) with interest thereon to July 1st, 1895, making the total sum due and payable to the plaintiff on the 1st day of July, 1895, $37,489.10. Subsequently the plaintiff for reasons hereafter appearing allowed the defendant an additional credit of $4,875.56, thus cutting down the sum total to $32,772.14. This sum was due and payable to the plaintiff on the 1st day of July, 1895. The defendant refused to pay it. Why should it not bear interest? It was the sum due the plaintiff at that time and which the defendant should have paid at that time. Not to allow interest upon it is to encourage and reward the defendant in delaying its payment as long as possible and so the courts have held. Thus in Hammond *vs.* Hammond, 2 Bland ch. 306 at pp. 371–380, the court says:—

"The auditor in a creditor's suit always makes a statement of the claims, allowing interest to each if entitled to it, and the aggregate thus shown is considered as *the liquidated debt due to each* and an order confirming such a statement is a judgment of the court in favor of each creditor which like a judgment at law converts the interest into principal. Interest is therefore to be computed from that time found upon the aggregate amount."

To the same effect is:

Stuart *vs.* Gay, 127 U. S. 518, at page 531.
Childers *vs.* Dean, 4 Randolph, 406, 408.
Fitzhugh *vs.* McPherson, 3 Gill, 409–428.

IV.

The claim of the appellant that "the additional credit of $4,870.56 allowed to the appellant by the decree" should be deducted from the $27,916.57 allowed appellee by the auditor seems to arise from a misunderstanding of the decree. It was shown before the auditor that Mr. Cummings in his administration of the Cooke assignment had up to the date of his accounting before the auditor collected *no fees whatever* out of

the $104,977.91 which had come into his hands, but that he held certain securities now unsalable as a guarantee for their final payment. The auditor notwithstanding charged Mr. Cummings with one-half of five per cent. upon the amount collected. His report upon this matter being as follows:

"I am directed by the order of reference to allow the defendant in this account one-half of all the fees and commissions which the plaintiff received or reasonably should have received by reason of the assignment of H. D. Cooke & Co. The deed of assignment of this firm to the plaintiff, which is filed as an exhibit in this reference, provides that from the proceeds coming into the hands of the assignee there should be first paid the expenses of sales and collections and of preparing and executing the trust, including a commission of five per cent. upon the amount of said sales and collections for his services in the discharge of the said trust. The sum of these sales and collections as testified to by the plaintiff in the reference is one hundred and four thousand nine hundred and seventy-seven dollars and seventy-one cents, upon which amount the plaintiff was entitled to retain the sum of five per cent. as provided by the deed of assignment. He testifies that he did not retain any sum for his commission or fees, but that he holds certain securities as a guarantee for their final payment. I think that for the omission to retain these commissions from the moneys coming into his hands the plaintiff is alone responsible, and that the defendant is entitled to one-half of the sum which should so have been retained. I have therefore charged the plaintiff with these commissions as if they had been retained or collected by him. It appears in the testimony in this cause, on page 67 of the printed record, being the testimony of the plaintiff, that the sum he *had expected* to charge for services under this assignment, including commissions on the collections and payment, was fifteen thousand dollars, and it is claimed here that in view of his testimony, he should be charged with that sum as being the fees and commissions which he should reasonably have received. Notwithstanding the evidence of the plaintiff on this point, I do not feel justified in charging him in the account a greater sum than that stipulated by the deed of assignment in view of the fact that there may be objections to any further or greater allowance to him and such allowance may not finally be made."

The court below overruled the plaintiff's exception to this finding of the Auditor, and went even further in favor of the

defendant, for upon the theory that the plaintiff *might perchance* be allowed this $15,000 on the final closing of the assignment the learned judge proposed to leave the decree so far open in respect to this matter as to allow the defendant to come in *at any future time* and pray for a further allowance at the foot of the decree in case he should be able to show that the plaintiff had received a greater allowance than the five per cent. stipulated for by the deed of assignment.

To this proposed action the plaintiff strenuously objected on the ground that it would be not only leaving him open to further litigation, but would also deprive him of the benefit of a *final* decree to which he insisted he was entitled. To avoid, therefore, the insertion of such an irregular clause or proviso in the decree and to bring this already wearisome litigation to an end, the plaintiff *of his own motion consented* to make a *gratuitous* allowance to the defendant of the difference between the $2,624.44 allowed by the court and the $7,500 claimed by the defendant, to wit, the sum of $4,875.56. The language of the decree in regard to this matter being "and the plaintiff now in open court *consenting* to the defendant being allowed, in addition to the allowance made by the Auditor to the defendant in the matter of the Henry D. Cooke assignment the further sum of four thousand eight hundred and seventy-five dollars and fifty-six cents," &c.

There is no reason therefore why the defendant should be allowed interest on a sum of money gratuitously allowed him by the plaintiff—money which the plaintiff has never received and may never receive. The allowance of the $2,624.44 was erroneous, and the fact that we have not further carried our exception to its allowance does not make it any less so. The Cooke assignment was entirely out of the scope of the partnership business which the plaintiff and defendant were engaged in, and the defendant had consequently no more right to share in the plaintiff's profits therefrom, had he received any, than the plaintiff would have been entitled to share in the profits of

any real estate investments of the defendant. This very question has been decided by the Supreme Court of the United States.

Each partner is the agent of his co-partner in all transactions relating to partnership business, and is forbidden to traffic therein for his own advantage, and if he does, will be held accountable for all profits. ***But beyond the line of the trade or business in which the firm is engaged, there is no restraint on his right to traffic.*** As one partner has no authority to bind the firm outside of their ordinary business, ***he cannot, of course, be held liable to account,*** should he make a profitable adventure in a matter not legitimately connected with the business of the firm.

V/heeler *vs.* Sage, 1 Wall 518 at p. 528.
Latta *vs.* Kilbourne, 150 U. S. 524, at p. 549.
King *vs.* Whiton, 15 Wis. 684.

It is said, however, that in the case of a law partnership the commissions which one of the partners receives in serving as a trustee, executor, etc., is divisible with his co-partner as part of the partnership earnings. It may be that some law partners have treated them as such, but it could, we submit, only be so by concession or previous agreement, and not by any edict of the law. King *vs.* Whiton, *supra*. But conceding for argument sake that such is the law in respect of partners engaged in a general practice where the members of the firm are constantly being appointed trustees in partition suits, receivers, etc., by the court, and conceding that because of their general practice of the law such appointments come to them through their connection with their clients; nevertheless such was not the case with the firm of Cummings & Baker. The record shows that they were not engaged in any practice before the Common Law Courts. Cummings himself was not even a member of the bar of the law courts of the District, and it was even disputed by Baker that he was a member of the Court of Claims. The only business of the firm was the prosecution of claims

before the Departments. There is no evidence whatever that either member of the firm ever acted as trustee or executor, or that either of them ever had a client who sought their services in the common law courts. Henry D. Cooke was never a client of the firm. He was a banker who was largely indebted to Cummings.

"When Mr. Cooke failed he was owing me a large amount of money, and I took the assigneeship for the purpose of seeing if by means of the assigneeship and of the fees coming therefrom I could in any way repay myself the amount that was due me." (Rec. p. 32.)

For the same reason, or want of reason, it might be said that when A, one of the two partners, is elected to Congress he should share his pay with his co-partner because the people seek out lawyers to elect them as Congressmen, and therefore if A hadn't been a lawyer he wouldn't have been a Congressman.

But Baker says it was a part of the agreement that Cummings should divide his fees in the Cooke assignment. This is denied by Cummings, and the burden of proof is on Baker to establish it. Cummings says:

"The prospective fee in the H. D. Cooke matter never played any part in this trade for the reason that Mr. Baker time and again told me, 'Well, you will never get anything out of that case,' but when the trade *was made* Mr. Baker said, 'Of course I shall claim nothing of whatever you may obtain in the H. D. Cooke case.'" (Rec. 134.)

This was generous of Baker considering that he never was entitled to claim anything out of it.

The defendant therefore has been very liberally dealt with both by the court and the plaintiff. The money allowed him was a pure gratuity and of course he is not entitled to interest upon it. The decree should be affirmed.

FRANKLIN H. MACKEY,
Solicitor for Appellee.

No. 189.

Sup. Ct. Dist. of Mackey v. Saffor
for Appellee.

Filed Jan. 14, 1898.

JAN 14 1898
JAMES H. McKENNEY
CLERK

IN THE Supreme Court of the United States.

OCTOBER TERM, 1897.

HENRY M. BAKER, *Appellant,*

vs.

HORACE S. CUMMINGS, *Appellee.*

No. 189

SUPPLEMENTAL BRIEF FOR THE APPELLEE.

This is an Equity Cause coming to this Court by appeal from the Court of Appeals of the District of Columbia. It had gone to that Court by appeal, *by the present appellant*, from the Supreme Court of the District.

Mr. Justice Hagner of the Supreme Court of the District, in an elaborate decision and opinion found the facts to be that the appellant had by concealment, fraud and misrepresentation, defrauded the appellee in the matter of the so-called purchase of a portion of the assets of the firm composed of the appellant and appellee, to an amount exceeding thirty thousand dollars. From that determination Baker appealed to the Court of Appeals and that Court found precisely the same facts.

In the brief filed by Appellant in this Court, no question is made as to the legal principles discussed and determined by the Supreme Court who rendered the decision in the first instance or that of the Court by whom it was considered on appeal.

The entire contention of the Appellant's counsel in this Court, is, that these two Courts erred as to the facts they found and that subject is discussed from pages 13 to 72 of their brief. The first 13 pages being devoted to an abstract of the pleadings and the assignment of errors, and the last page of the brief, p. 72, is devoted to the assignment of a reason by counsel as to why this Court should treat the case at bar as being an exception to the rule so firmly established and discussed in the original brief for the Appellee, pp. 7-9, " that where two Courts of Equity have already decided the facts in a case, the first Court as an original question and the second Court on appeal, the Supreme Court of the United States will not reverse that finding *except in the case of a most manifest error* It will be regarded as analogous to the finding of a jury in a case at law."

This Court is asked to ignore its numerous decisions to this effect and confirm by a decision which has been recently announced from this bench, Stewart *vs.* Hayden; and a reason having been given for this unusual request, it is proper that the reason should be discussed. As before stated that reason is to be found on p. 72 of the brief *contra*. It is as follows:

> " The character and honor of Mr. Baker have been by this suit assailed for the first time and so, we are justified in asking the careful consideration of this Court, of the history of this case, and the testimony which bears upon it."

Undoubtedly whether Baker's character had been attacked for the first or the hundredth time by this suit, this Court would carefully consider the history of the case—in fact "the history of the case" puts an end to the controversy, if this Court adheres to its established precedents.

It is confidently submitted, however, that the assertion of counsel that this suit is the *first* attack on the integrity of the appellant even if true, is not a reason why the salutary rule of this Court should be ignored.

The Court would stultify itself, if it added to the rule as now announced—and made its operation dependent upon the question as to whether the integrity of the appellant was assailed for the first time or not.

Under the rule as now understood, the facts will not be reconsidered in this Court "except in the case of the most manifest error." Will the Court add to this another qualification by adding, "unless appellant's counsel state in their brief that this suit is the first attack which has been made on the character and honor of the appellant?"

If that question is to be considered a pertinent one, something more than mere assertion of counsel should be required; and as to the present case, the Court would fall into grievous error should it assume the fact in that regard, to be as stated.

It is true that the character and honor of the appellant have been assailed by this suit and quite successfully, but it does not appear that it is the *first time* that his character and honor have

been assailed, for the Court to arrive at that conclusion must presume that the certifying counsel have had an unlimited acquaintance with the entire life and conduct of the appellant; if the modification of the rule contended for be made, it is safe to say that future litigants in this Court, when confronted with the difficulty of having the concurrent adverse decisions of the lower courts against them, will be able to find counsel who will state that the suit is the *first* attack on the integrity and honor of the client.

No particular immunity or privilege should be accorded to a wrong-doer even though it be his first deviation from the path of rectitude.

Besides it is entirely uncontradicted that by means of the unconscionable conduct of the appellant, he paid the appellee for transferring some of the assets of the firm to him, out of money in his hands entirely belonging to appellee, leaving a very comfortable sum still in his own hands and under which he has put into his pocket $32,772.14 (and probably a great deal more) which of right belonged to the appellee.

FRANKLIN H. MACKEY,
A. G. SAFFORD,
Of Counsel to Appellee.

BAKER *v.* CUMMINGS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 189. Argued January 14, 17, 1898. — Decided February 21, 1898.

Stuart v. *Hayden*, 169 U. S. 1, affirmed to the point that when two courts have reached the same conclusion on a question of fact, their finding will not be disturbed unless it be clear that their conclusion was erroneous.

Metropolitan National Bank v. *St. Louis Dispatch Co.*, 149 U. S. 436, affirmed to the point that courts of equity, in cases of concurrent jurisdiction, consider themselves bound by the statutes of limitation which govern actions at law.

In this case the court arrives at the conclusion, on the evidence, that if the false representations as to the earned fees were made by Baker as alleged, there was entire knowledge thereof by Cummings more than three years before the filing of his bill, which is the time in which an action at law for such a cause is barred in the District of Columbia, and that the conduct of Cummings, in permitting Baker to go on and prosecute the claims as if they were his own, debars him from proceeding in a court of equity; but in so holding the court must not be considered as intimating that it concludes that there was either clear and convincing proof, or even a preponderance of proof, that the sale was as claimed by Cummings.

THIS suit was commenced by appellee Cummings on Febru-

ary 1, 1890, by a bill filed on the equity side of the Supreme Court of the District of Columbia against Baker, the appellant. In substance, the bill set forth the formation about the year 1874 of a partnership between Cummings and Baker for the practice of law in the city of Washington; that the expenses were to be borne and the profits shared equally between the partners; that the firm some years thereafter became attorneys for the collection of claims against the United States in favor of certain inspectors of customs for arrears of pay claimed to be due them. It alleged that on September 6, 1886, Cummings sold to Baker all his interest in the fees earned but not then divided, and those yet to be earned from such claims, and that there was consequently a dissolution of the partnership as to these matters, but that it continued as to all other business until September, 1889, when the partnership was dissolved. The object of the bill was to procure a cancellation and annulment of the sale of the fees in inspector cases made as above stated and of the written instrument of assignment by which it was evidenced, on the ground of false representations claimed to have been made by Baker to Cummings in the negotiations for the sale, which representations were averred to have brought about the consent to the sale and the execution of the assignment to carry out the same. The fraud specified was, in substance, this: That Baker had misrepresented the amount of the fees then actually earned by the firm and undivided between the partners on the inspectors' claims, for which appropriations had then been made by Congress, by stating to Cummings that the then earned fees only equalled about $20,000, when in truth and in fact they were, to the knowledge of Baker, about $32,000; that as to the future claims then in the hands of the firm but not then allowed by the Treasury Department or appropriated for by Congress, Baker had knowingly largely understated the amount thereof by representing them to be only $80,000, when in fact they then amounted to about $275,000. The relief prayed was an annulment of the sale; a full settlement of the partnership affairs, treating the fees in the inspector cases as being a part of the partnership assets; and in aid of the final settlement which

was asked, there was also a prayer that Baker be enjoined from prosecuting an action instituted by him against Cummings, in December, 1889, to recover $2712.81 and interest, it being averred that Baker's right to this amount was involved in a settlement of the entire partnership affairs.

The answer of Baker denied that there had been any fraud practised upon Cummings in the purchase of his interest in the fees in the inspector cases, and the alleged misrepresentations as to both classes of fees, whether earned or to be earned, was expressly denied. The averment, that the complainant had sold his interest in the fees on a basis of his ownership of one half therein, was directly traversed, and on the contrary it was alleged that the assignment resulted from the following circumstances and had been made upon these conditions: That the existence of claims by inspectors of customs against the Government had been discovered by Baker, and that he had procured the business of prosecuting them for the firm for a compensation, in most cases, of twenty-five per cent of the sum collected, and had substantially by his own labors pressed them to a successful issue, and that the result of his exertions had been to earn for the partnership a considerable sum of money, which had been, prior to 1886, divided between the partners equally; that during the course of the business Cummings had given little or no attention to the inspectors' claims, but on the contrary had neglected not only these claims, but the partnership affairs generally; that, in consequence of these facts, for months prior to September, 1886, Baker had determined to put an end to the partnership, and had so informed Cummings; that for the purpose of preventing this dissolution and securing a continued association with him (Baker) in business, which Cummings desired, an agreement had been entered into between the partners that Cummings, instead of taking an equal interest in the earnings of the firm from the inspectors' cases, should dispose of his rights therein on the basis of his having only a one-third instead of a one-half interest; that on this agreement, as to the proportion in which the partners should be entitled to the fees, and Cummings's judgment of the future result of claims unallowed and unap-

propriated for, which were in their very nature largely conjectural, the sale was made for a consideration of $15,000 cash to be paid by Baker to Cummings, the latter to retain in addition the full amount of all fees due to him for his services as assignee of an insolvent banking firm, which latter amount, without the release, it was averred, would have been an asset of the partnership, and was estimated to equal $10,000, of which Baker's share would have been one half.

The answer, moreover, averred that at the time of the sale Cummings had full information of the condition of the business in the inspector cases and dealt with his eyes open; that as a partner he was not only familiar with the general manner in which the business was conducted, but also, about two weeks prior to the sale, he received from Baker papers and documents which fully informed him of the exact condition of the claims, his interest in which it was proposed to sell, the papers and documents in question having been handed to Cummings during the pendency of the negotiations in order that he might ascertain the precise situation.

In addition, the answer averred that immediately after the sale, and before Cummings had cashed a check for $15,000, given him by Baker in payment of the amount of the purchase price, Cummings was put in possession of papers and documents which were acted upon by him, and which, if any fraudulent representation had been made in relation to the sale, fully informed him of the fact in ample time to have protected his interest: and although this full information was given him, before the purchase price was collected, Cummings made no pretence of any deceit practised upon him, or made any complaint as to the contract, but continued in the partnership as a member of the firm as to other business, and that the first complaint which was made by him of any unfairness in the transaction was nearly three years after the sale, and then only after Baker had insisted upon payment to him by Cummings of a sum which Baker claimed was due him, and had moreover expressed his unalterable intention to dissolve the partnership. The defence of the bar of the statute of limitations was specially pleaded.

At the hearing a decree was entered for complainant, and a reference was made to an auditor to state the accounts between the parties. Pending the hearing on such reference, an appeal from the interlocutory decree was prosecuted to the Court of Appeals of the District of Columbia, where a judgment of affirmance was rendered. 4 App. D. C. 230. Subsequently, on confirmation of the report of the auditor, a final decree was entered in favor of the complainant for the sum of $32,772.14, with interest thereon from the 1st day of July, 1895, until paid, in which sum was embraced a credit to Baker of the items claimed by him in his action at law against Cummings. From this final decree an appeal was taken to the Court of Appeals for the District, by which it was affirmed. 8 App. D. C. 515. This appeal was then taken.

Mr. S. R. Bond and *Mr. George F. Edmunds* for appellant.

Mr. Franklin H. Mackey for appellee.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court.

Before approaching a discussion of the issues which we deem it necessary to pass upon in order to conclude the controversy which the record presents, it will subserve the purpose of clearness of statement to give a brief outline of the proof as to matters about which there is no substantial controversy and to point to the controverted question, thus eliminating from view irrelevant contentions, and concentrating the attention on the material issues.

1. The existence of the partnership was established as alleged, and the fact that the claims of the inspectors had been unearthed by Baker, and had been mainly secured by him for the firm on a contingent fee of twenty-five per cent, and had been almost exclusively prosecuted by him, was established beyond question. That Cummings had not given any great attention to the business for several years, and that Baker was dissatisfied therewith and had threatened to dis-

solve the partnership many months before September, 1886, though not explicitly admitted by Cummings, was also conclusively established.

2. The sale of Cummings's interest in the inspector fees, both earned and unearned, for a consideration which embraced a cash payment of $15,000, was also established beyond dispute. That in the negotiations which preceded the sale Cummings contemplated something besides a mere division between himself and Baker in equal proportions of the rights of each in and to the fees, was also indisputably proven. This is testified to by Cummings himself as follows:

"I said, 'Mr. Baker, I make you this proposition: I will take one half fees in all the cases in which we have powers of attorney and contracts prior to the 1st of January, 1886, or I will take one third of all the fees in all the cases (leaving him two thirds), or I will take $15,000, as you offer, according to what you think is the best for me.'"

Undoubtedly, also, the proof establishes that when the sale was made the fees for cases allowed and appropriated for, then undivided, amounted to about $32,000, and that the claims subsequently allowed and appropriated for largely exceeded $80,000. From these conceded facts there arises a grave contention; Cummings claiming that, as he was entitled to an equal share of the fees, he was led, by the misrepresentations of Baker, into making a seeming sale of his interest, receiving as a consideration virtually nothing but his own money; Baker, on the other hand, contending that the transaction between the parties did not contemplate a mere division of their interest, but a sale by Cummings of his rights on the basis of his being entitled only to a one-third interest in the fees, in order to obtain a continuance of the partnership as to other matters, and that the sum of $15,000 and the right of Cummings to retain the assignee's fees before referred to, was fixed by Cummings, from his knowledge of the business and his investigations made at the time, as a fair equivalent for his agreed one-third right as above stated.

3. Nor does any real dispute exist as to the fact that when the active negotiations for the sale begun, papers were handed

Cummings by Baker, from which an understanding of the state of the whole business could have been derived; that these papers were taken home by Cummings and retained for several weeks until just before the sale was consummated. Whilst as to these facts there is no conflict in the proof, there is a controversy as to whether it was established that Cummings examined the papers carefully so as to put himself in possession of the information which might have been obtained from them; Cummings claiming that the papers were of such a confused nature that he could have arrived at an accurate knowledge only by inquiry, labor and investigation, which he did not make, as he preferred to rely upon Baker's special acquaintance with the status of the claims. Baker, on the other hand, claiming that he had no greater information than was accessible to Cummings, and that the latter dealt on the faith of his own knowledge and estimate, and not upon information derived from or representations made by Baker personally.

4. The proof also establishes, and there is no contention on the subject, that on the evening of the sale or the morning of the day following, Baker left the city of Washington for the State of New Hampshire; that he left Cummings in the office, and before going placed in his hands a document known in the record as Exhibit H. M. B., No. 3, to enable Cummings to look after any matters in the inspector cases which might require attention during his (Baker's) absence; that at the same time Baker left with Cummings the bank deposit book of Baker, with his check book containing signed and unfilled checks to be used as occasion required in the making of remittances or payments in the inspector cases; that Cummings acted upon this authority and made deposits of drafts collected from the Government, drew checks for amounts due claimants, and made entries indicating these latter facts upon the schedule in question; that at the time of Baker's departure Cummings had not cashed the check given him by Baker as the consideration for the sale, and that Cummings cancelled it, and on different occasions filled up three of the signed checks left by Baker, for the sum of $5000 each, and collected

the same, thus acquiring the consideration referred to. The proof further established that Baker remained absent for nearly a month, and on his return found Cummings in the office as usual; that they continued thereafter to occupy the same office, and that no complaint was made by Cummings as to the fairness of the sale until nearly three years thereafter, at which time Baker was pressing a claim against Cummings, and had told him that he was going to dissolve the partnership.

The controverted issue arising from the foregoing unquestioned facts is this: Cummings claims that he did not derive knowledge of the fraud he complains of from the matters just stated; whilst Baker asserts that if the fraud in the purchase complained of by Cummings had existed, full knowledge thereof was conveyed to Cummings by the facts above stated, and that the silence of the latter and his inaction for years, and until Baker had made claim for money and stated his intention to dissolve partnership, not only establishes the want of foundation for Cummings's assertion that there was misrepresentation and fraud in the sale, but also makes clear the fact that the right to make such claim was barred, both by limitations and laches, when the demand of Cummings was actually preferred.

It results from the foregoing that the facts as to the controverted matters are embraced in a narrow compass, and that the whole case really resolves itself into two issues: 1st. Does the proof establish that the purchase and sale in question was as claimed by Cummings, or as asserted by Baker? In that question is necessarily embraced the further one of whether Cummings, at the time of the sale, had actual knowledge of the fraudulent representations claimed to have been made by Baker. This is, in terms, included, because it would be impossible in reason to declare that one had been deluded or deceived by misrepresentations into entering into a contract if he had actual knowledge when the contract was made that the alleged inducing representations were false. 2d. Conceding that Cummings was misled by the fraudulent representations of Baker as alleged, did he immediately after the

sale, and before the collection by him of the cash consideration of the sale, discover that the representations were untrue, and thereby become aware that he had been grossly deceived and defrauded, and did he, with such knowledge, say nothing about the matter, collect the cash consideration, remain silent, and continue in partnership with Baker, occupying the same office for years, and only assert that he had been deceived when a dissolution of the partnership was threatened and he was pressed to pay a sum which Baker claimed Cummings owed him? This latter inquiry assumes a twofold aspect, for although in the bill, in the opinions below, and in the argument at bar, the efficient misrepresentation, which it is asserted rendered the assignment void, was the fraudulent statement as to the sum of the fees on the claims then allowed and appropriated for, nevertheless it is also, as we have seen, asserted in the bill and contended in argument that there was a misrepresentation as to the pending claims not yet acted upon by the department, and which were then unappropriated for by Congress.

We will defer an examination of the testimony as to the existence of the fraud and misrepresentation complained of until we have passed on the charge that, if there was fraud and misrepresentation, Cummings had full knowledge thereof immediately after the sale. We adopt this order of consideration because if it be found that such was the case, the question whether the fraud originally existed will become immaterial, in view of the defences of limitation and laches. Moreover, in reviewing the question of knowledge, we will do so in the order stated, that is, first, discovery of the alleged fraud and misrepresentation as to the amount of fees collected and in process of collection from claims appropriated for at the time of the sale; and, second, discovery of the misrepresentation as to the amount of pending claims from which further fees were expected. Here, also, it is to be premised that if the first proposition be found to be well taken, an examination of the second will be wholly unnecessary. This, obviously, is the case, for as the statute of limitations began to run from the time when suit might have been brought to annul the sale, it

results that the discovery of the falsity of *any* material and fraudulent representation by which the sale had been induced, gave rise to the right to commence an action to rescind, and therefore fixed the period when the statute of limitations commenced its course.

I. — *Did the schedules left with Cummings the day after the sale, when Baker went off to New Hampshire, and which remained in the custody of Cummings and were practically under his control, convey to Cummings full knowledge that he had been grossly deceived as to the amount of fees collected, as alleged by him, if his statement that such false representation had been made was true, and did he remain silent for three years thereafter?*

In entering upon an analysis of the evidence upon this particular subject, we shall be governed by the principle determined by this court in numerous cases — of which *Stuart* v. *Hayden*, 169 U. S. 1, decided at the present term, is the last expression — that when two courts have reached the same conclusion on a question of fact, their finding will not be disturbed unless it be clear that their conclusion was erroneous.

To determine whether Cummings knew immediately after the sale, and before he had collected the price thereof, whether misrepresentations had been made to him and fraud practised upon him as to fees from cases then appropriated for, it is, of course, essential to see clearly what were the misrepresentations asserted to have been made, and what was the fraud claimed to have been perpetrated. They were, as alleged in the bill, that Baker, with a knowledge that the fees from the claims allowed and appropriated for were $32,000, had concealed the fact from Cummings, and represented that such fees were only equal to $20,000 or thereabouts. It is obvious then that the fraudulent representation alleged was not as to the amount of the claims allowed and appropriated for upon which the fee of twenty-five per cent was to be calculated, but as to the sum of the fees to arise from the calculation. And this is unmistakably established by the testimony of Cummings in his examination on the 29th of February, 1892, where he said, in describing the representation made by Baker to him:

"I asked Mr. Baker how many fees there were that were due us in cases that had been adjudicated and for which appropriation had been made, and which were then in the process of collection, and he said about $20,000, or not more than $22,000. I was somewhat surprised at that, and I so expressed my surprise to him; he said that our fees in some of those cases were not as much as usual; some only about 10, 15 or 20 per cent."

It is not reasonable to infer that surprise could have arisen as to the amount of fees if there had been no antecedent knowledge of the sum of the claims on which the fees were to be calculated. The fact that Cummings had approximate general knowledge of the amount of the claims is not only shown by the particular statement just cited, but by his declaration that he observed when appropriations were made, knew at the time that the appropriation of August, 1886, had been made, and also knew that practically all of the inspector cases were controlled by his firm. As all the fees earned which were embraced in the sale arose from claims covered by the appropriation made in August, 1886, it follows that these statements by Cummings and his admitted knowledge of the August appropriation taken together leave no doubt that Cummings was fully informed as to the sum of the claims from which the earned fees arose. Indeed, the possibility of any other view of the testimony is removed by a statement of Cummings subsequently made, and to which we shall hereafter more fully refer, in which he plainly says that he knew that the gross amount coming in on the basis of the usual compensation was $32,000, and supposed that the reduced amount arose from charges against it.

Now, then, the issue of fact to be determined is this: Could it have been possible for Cummings to have received the schedule in question on the morning after the sale, to have dealt with it, to have made entries on it at various times, without being informed that the fees of the firm were not less than 25 per cent in a sufficient number of cases to have justified any belief whatever that the sum of the fees was reduced from $32,000 to $20,000? The schedule left in his hands by

Baker contained seven sheets. In one column was the name of the claimant, in another the total allowance, in a third the fee, in a fourth the amount of the remittance to the claimant, in a fifth the date of the remittance, in a sixth whether remitted by check, in a seventh the number of the check, and in an eighth column the date of the check. The amount of the aggregate fees appearing on each sheet was added up and stated at the bottom of the column. With such total stated, the only act required to ascertain the aggregate amount of all the fees was to sum the footing of the sheets. And yet the want of knowledge by Cummings of the fraud is predicated upon the proposition that although these sheets were in his hands for nearly a month, while he was dealing with them making entries on them, he was so careless as never even to make the addition which would have conveyed to him absolute knowledge of the fact that the fraud had been committed. But even the addition was not necessary, for if the fraudulent misrepresentation was made, it was not, as we have seen, as to the gross amount, but as to the net fees to be realized from the gross amount, that is, that the diminished amount arose from the fact that in the cases on the schedule the firm was getting less than 25 per cent. But on the sheets, in the column of fees immediately next to the column of amount allowed, the sum of the fee in each case was stated, and no eye could even casually look at the schedule without observing that nearly all the fees were stated therein at the rate of 25 per cent, and not at a diminished rate. However, to hold that Cummings did not derive knowledge from the schedule, the reasoning must go yet further. Out of 106 names on the schedule, there were only five where the fees stated were less than 25 per cent, and in four of these five cases the fact that the fee was a reduced percentage was made evident by the statement expressed in figures immediately opposite the name of the claimant, giving the exact percentage upon which the fee was calculated. The mind, then, is driven to the conclusion that the testimony beyond doubt establishes that Cummings knew immediately after the sale and before he collected the price that Baker had made to him a gross and wilful misrepresentation, if the

statement was made by Baker to which Cummings testifies, and which he asserts operated to induce him to part with his interest.

Overwhelming as is the proof that the schedule conveyed to Cummings the knowledge of the fraud if it had been perpetrated, such fact is unquestionably shown by Cummings's further testimony. At a subsequent stage of his examination when he was questioned on the subject and his possession of the schedule had been developed, he frankly admitted that his possession of the schedule and his dealings with it had informed him that Baker's representation which he swore had been made about the diminished percentage was untrue, but that he had on such discovery lulled himself into security by the belief that there must have been another reason for Baker's statement of the reduction in the amount of fees, that is, the large sums which Baker might have had to pay out to other attorneys, and presumably under this belief he remained silent. We extract a question and answer bearing on this subject:

"Q. Now, then, your check was paid in that way. When did you first obtain any knowledge as to the amount of claims which had been collected by Baker upon the first class of cases — I allude to the class of cases in which he said there were from $20,000 to $22,000 in fees, the cases in which appropriation had already been made; and you may also state at the same time when you first discovered in regard to the other class of cases in which no appropriation had been made — when you first discovered the amount?

"A. The amount of the claims that had been adjudicated and which were in the process of collection I discovered, of course, within a day or two after Mr. Baker had delivered me the schedules, and I continued the collections, because these schedules contained the name, the amount, the fee and all the data pertaining to each case, and it was hard for me to reconcile the amount of fees that he said and the amount of fees that were on the schedule, and I know often we had to pay out a large amount of our fees to other attorneys, as I frequently had paid one half of a fee to a local attorney to work

up the evidence, and I had supposed the great diminution of these fees from what I supposed, viz., $32,000, in the vicinity of $30,000, was owing to the division with other lawyers. It has been my habit in a number of cases — I write down my ideas of things, and on that occasion I sat down and I made a private memorandum for myself, giving my impressions of the matter, wondering as to whether I had done the best or not and wondering if the facts were — "

However unreasonable may be this explanation, and however natural is the inference that, if Cummings had discovered that his partner had made a gross misstatement to him and defrauded him, he would not have completed the sale by collecting the consideration, but would have called his attention to the facts when the partner returned a month after, need not be discussed since the reason given by Cummings for his conduct is rendered wholly nugatory by another consideration, which is this: The seventh of the sheets left in the custody of Cummings contained a statement of the sums to be paid to other attorneys by the firm on the claims mentioned in the schedule. The form of this sheet was slightly different from that of the others. It showed the name of the attorney to whom the fee was due, in the next column in what case the fee was due, in the third column the date of the remittance of the fee, in the fourth column whether remitted by check, and in the fifth the date of the check. Now, if, as demonstrated by the proof and as admitted by Cummings himself in his second statement, his dealings with and relations to the schedule conveyed to him knowledge that there was no truth in Baker's supposed representation as to reduced percentages coming to the firm, how in reason can it be denied that knowledge that the amount could not have been materially reduced by fees paid to other attorneys must have also been conveyed to him when the schedule plainly showed the fact as to the amounts to be paid other attorneys and that they aggregated less than $1500. Indeed, it is justly to be inferred from the testimony that, as the facts shown by the schedule were developed and Cummings's memory was refreshed by the examination thereof, his mental condition changed, and he reached the

conclusion that he had been previously mistaken in saying that, although the schedule had informed him of the amount, he had been lulled into security, since he subsequently swore that the schedules gave him no information whatever, because he did not look at them at all. His statement to this effect is as follows:

"When Mr. Baker handed me that paper and called my attention to the fact that all had not been collected, and that quite a number of payments were still to be made, I simply put it in my desk; I paid no attention to it, because I considered the trade was made. I had nothing to do with it, but simply took that paper, and when a power of attorney would come in with power to cash the draft I would make the proper entry, but it never came into my head that there was anything wrong about it. I considered that I had sold out to Mr. Baker for a fair consideration. I had no idea that I was being paid with my own money."

So, also, on cross-examination in rebuttal, the following question was asked and answer given by complainant:

"Q. Mr. Cummings, you have stated that Exhibit H. M. B., No. 3, (the schedule we have been referring to,) in answer to a question by Mr. Claughton, was in your possession, and that you paid no attention to it and put it aside. You did not take enough interest in it to go over it and see what it was?

"A. The transaction was closed, as I supposed."

Again, after being cross-examined at some length and being called upon to explain his delay in instituting the present proceedings, and after he had stated that in 1886 he knew of the fact of the appropriation in August of that year by Congress, he was asked to state if he had discovered any facts in 1888 in relation to the appropriation of 1886 which he did not have in 1886. The reply was:

"A. I knew no more about the standing of the appropriations of 1886 for these cases and of the settlements thereunder for two years after those settlements were made; in other words, I had no knowledge of the appropriation of 1886 until my suspicions were aroused in 1888. *I supposed it was all fair and square.*

"I don't know that I learned anything in 1888 of consequence about the appropriation of 1886, but it was only when the three appropriations, amounting to about $240,000 in 1888, instead of the $80,000 as was represented to me, that I began to inquire into the matter, and my knowledge of the appropriation of 1886 and of the fees thereunder was gained by taking the appropriation of 1886 and going into the First Auditor's Office and seeing what drafts were delivered to Mr. Baker or Cummings, or Cummings and Baker, under the appropriation of 1886. When I had gotten the list of those drafts I got the correct amount of them.

"I think it was in the fall or winter of 1888 or 1889 when I got the list. I did not get a list; I made a list and I went back to my office and I took the Treasury executive document containing the allowances of those cases, and I estimated, as far as I could, and I believe that I am correct, that Mr. Baker received $135,000 on the claims of 1886.

"I don't remember now that I knew anything about the appropriation of 1886, intervening between 1886 and 1888, though I may have done so, but I do not remember it."

But the "list" referred to did not give him as much information as was contained in the schedule which was handed to him immediately after the sale, and which he had in his sole custody for more than three weeks. Nor can the statement of the witness that the schedule was not looked at, overcome the inherent probabilities as to the knowledge which must have been conveyed, in view of their contents, of the length of time they were in Cummings's possession, of his entries thereon and dealings therewith, and, above all, his previous sworn statement. In other words, the last statement that knowledge was not conveyed by the schedule cannot be taken as true without repudiating the previous declaration that the schedule had given the knowledge, but that its so doing did not excite suspicion, for a reason which the schedules themselves show could not have existed.

From the record we infer that this result must have produced an impression on the mind of Cummings, for, later on in his examination, when his attention was called to the fact that

if he had been deceived by Baker as to the sum of the fees when the sale was made, he could not have escaped discovering it when the schedules were handed him after the sale, he again changed his position and declared that he did not then take any action because the discovery of the misrepresentation as to the amount of the fees earned had not excited his suspicions, because of the immateriality of such misrepresentations.

"A. I am not going to give ideas, but simply facts. My whole idea as to whether I had made a poor trade or not had nothing to do with the amount of fees received in 1886, but solely and entirely on account of the future business that would come in; when Mr. Baker had told me that there was only $75,000 or $80,000 more of cases, out of which there would be a possible $20,000 of fees, I did not know whether that was correct or not, and, as I stated, I could not tell, but time alone would tell."

The situation, then, is this: Looking at the case, as made by the testimony of Cummings, it is impossible to avoid reaching two conclusions; 1st, that Cummings knew the exact condition of the earned fees shortly after the sale, and knew also that he had been grossly deceived if his statement of the transaction was the true one, and that with this full information he collected the price of the sale and remained quiescent for three years without complaining and without attempting to have the wrong rectified; 2d, that this conduct on his part is first attributed to one cause, and then to another and conflicting one. When both of these explanations are shown by the proof to be untrue, then the matter is finally explained by him by the statement that on the discovery of the facts he so acted, because he attached no importance whatever to the amount of the fees earned at the time of the sale, and considered that he had not been defrauded by the untrue representations which he asserted had been made in reference thereto. But the bill of complaint, as we have seen, proceeds, and the judgments below rested, upon the theory that the representation as to the amount of the earned fees at the time of the sale was the most material ground for rescinding the contract.

Our conclusion is, that the evidence not only clearly but beyond all question or dispute overwhelmingly shows that if the false representations as to the earned fees were made as alleged, there was entire knowledge thereof by Cummings. And, for reasons heretofore stated, this conclusion renders unnecessary any inquiry into the question of when Cummings discovered the falsity of the alleged representations as to the amount of pending claims.

The question which arises is: Can Cummings invoke the aid of a court of equity to afford him the relief which he seeks? A negative answer is compelled by a consideration of the most elementary principles.

As said in *Metropolitan National Bank* v. *St. Louis Dispatch Co.*, 149 U. S. 436, 448: "Courts of equity, in cases of concurrent jurisdiction, consider themselves bound by the statutes of limitation which govern actions at law." That Cummings might at his election have pursued a remedy for the alleged fraud in a court of law is obvious. And it is equally clear that such remedy at law, by action on the case predicated on the facts as to deceit and fraud, which are alleged in the bill now before us, would have been barred in three years from the discovery of the fraud under the Statutes of Limitation of Maryland of 1715, c. 23, § 2, in force in the District of Columbia. 1 Kilty's Statutes, 111; Comp. Laws Dist. Col., c. 42, § 6, p. 30. It hence follows, irrespective of the equitable doctrine of laches, that the relief which the bill seeks to obtain ought not to be allowed by a court of equity.

Apart, however, from the bar of the statute of limitations, the facts as to the full knowledge of the fraud, if any existed, by Cummings more than three years before the filing of his bill, and his conduct after he obtained it, his permitting Baker to go on and prosecute the claims as if they were his own, debars Cummings from invoking a court of conscience to put him in a much better position than he could possibly have occupied if he had spoken and asserted his rights in due season.

There cannot be a doubt that the right existed in Baker to have dissolved the partnership at any time. If this right on his part had been exercised, Cummings would not have been

in a position to have availed himself of the labors of Baker in prosecuting the future claims to a successful culmination, and would not therefore have been a participant in the profits arising therefrom. If with a full knowledge of the fraud Cummings chose to remain silent, to permit Baker to go on with the prosecution of the claims, to incur the expenditure of time and labor not only in the cases in which he was successful but in the cases in which he failed, Cummings cannot in conscience be allowed to reap the rewards which he could not possibly have obtained had he spoken with reasonable promptness, when the knowledge of the fraud if it existed was brought home to him in the most pointed and unequivocal way.

These broad considerations of equity and justice were not applied below because it was deemed that the occasion for their enforcement had not arisen, for two reasons: First, because it was thought that even if Cummings discovered the fraud in ample time to have availed himself of his rights, he was lulled into not doing so by his faith and confidence in Baker and his disinclination to believe that Baker had perpetrated so gross a fraud upon him. Second, because it was said as Cummings's share of the earned fees, upon the theory of a half and half division, was equal to the price which he received, there was no consideration for the sale, and the transaction was wholly void, hence there was no room for the application either of the statute of limitations or the doctrine of laches. In other words, that the partnership continued as to the inspector claims just as if no sale had been made. And the doctrine was carried to its logical outcome, since the judgment below awarded to Cummings a share in the fees earned by Baker, from contracts not under the control of the firm at the time of the sale of the interest in the inspector cases, but which were acquired by Baker thereafter.

But neither of these views meets our approbation. The first is completely answered by the fact that the analysis of the evidence which we have made conclusively establishes that if the fraud was perpetrated as alleged, the fullest knowledge was conveyed to Cummings more than three years before he brought his suit. Under this state of facts the

reasoning comes then to this, that there is no doctrine, either of limitation or of laches, applicable to a case of alleged fraud even although the party obtains almost at once full knowledge thereof, if he choose without due reason to affirm that he did not act because he was unwilling to believe his own senses. Reduced to its ultimate deduction, the proposition maintains this doctrine, that if one against whom a fraud has been perpetrated and who thereafter is in all respects fully informed of its nature and extent, chooses not to act, his so electing may continue indefinitely, provided only he declares not that he did not know, but that knowing he did not believe.

The second proposition, conceding *arguendo* the facts are as it assumed them to be, that is, that the price was paid Cummings from his own money, leads in reason to an equally impossible result, since its consequence is substantially to affirm that neither limitation nor laches can be applied in equity when from a given view of the proof it is considered that a fraud has been committed of such a nature as to avoid a contract. That this is the logical outcome of the proposition is shown by its application to the case under consideration. Whether or not Cummings was paid by his own money depends upon an analysis of the facts and a finding as to their preponderance. If the theory of Baker be true that the contract contemplated a division between the partners as to the claims in question, not upon the basis of one half each, but upon the basis of two thirds to Baker and one third to Cummings, because the claims had been largely realized by the efforts of Baker, and because, as a consideration for so dividing, Baker agreed as to other business to continue the partnership with Cummings when otherwise he would have dissolved, there can be no pretence for the claim that Cummings was paid with his own money. To say, then, that Cummings was paid by his own money necessitates deciding that the fraud was established as alleged by Cummings. But the principle by which the bar of the statute of limitations is enforced by a court of equity and upon which the doctrine of laches rests is that equitable powers will not be exercised to discover whether one has been wronged when, with full

knowledge of the alleged wrong, he has allowed the bar of the statute of limitations to arise, and has slept upon his rights until such a situation has arisen as to render it inequitable to afford him relief. By the effect of the proposition referred to these principles are subverted, and a new doctrine arises which may be thus stated: A court of equity will not grant relief against fraud where the one against whom the fraud has been committed has, after its discovery, allowed the bar of the statute of limitations to be accomplished, unless there has been fraud, and if there has been such fraud neither laches nor limitation can ever apply.

Because we rest our conclusions upon the application of the bar of the statute and the laches of Cummings, we must not be considered as intimating that we conclude that there was either clear and convincing proof, or even a preponderance of proof, that the sale was as claimed by Cummings.

It follows that the decree of the Court of Appeals of the District of Columbia must be reversed, and the cause be remanded to that court, with directions to set aside the decree of the Supreme Court of the District of Columbia, and to remand the cause to that court with instructions to dismiss the bill, and it is so ordered.